

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,

Plaintiff,

v.

AMMON BUNDY (1),
JON RITZHEIMER (2),
JOSEPH O'SHAUGHNESSY (3),
RYAN PAYNE (4),
RYAN BUNDY (5),
BRIAN CAVALIER (6),
SHAWNA COX (7),
PETER SANTILLI (8),
JASON PATRICK (9),
DUANE LEO EHMER (10),
DYLAN ANDERSON (11),
SEAN ANDERSON (12),
DAVID LEE FRY (13),
JEFF WAYNE BANTA (14),
SANDRA LYNN ANDERSON (15),
KENNETH MEDENBACH (16),
BLAINE COOPER (17),
WESLEY KJAR (18),
COREY LEQUIEU (19),
NEIL WAMPLER (20),
JASON CHARLES BLOMGREN (21),
DARRYL WILLIAM THORN (22),
GEOFFREY STANEK (23),
ERIC LEE FLORES (25),
JAKE RYAN (26),

Defendants.

Case No. 3:16-CR-0051-BR

April 6, 2016

Portland, Oregon

TRANSCRIPT OF PROCEEDINGS

(Oral Argument)

BEFORE THE HONORABLE ANNA J. BROWN, DISTRICT JUDGE

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1 (Wednesday, April 6, 2016; 9:30 a.m.)

2
3 P R O C E E D I N G S
4

5 THE COURT: Good morning, everyone. Please be
6 seated.

7 THE ATTORNEYS: Good morning, your Honor.

8 THE COURT: Mr. Knight.

9 MR. KNIGHT: Good morning, your Honor. We're present
10 in the matter of the United States versus Ammon Bundy, et al.
11 This is Case No. 16-CR-0051.

12 Ethan Knight, Geoff Barrow, and Craig Gabriel
13 appearing on behalf of the United States.

14 Defendants are present as noted, with counsel.
15 Specifically, your Honor, I will note for the record that eight
16 defendants have executed waivers of personal appearance today
17 and they are as follows:

18 Defendant Shawna Cox has waived her personal
19 appearance. She is present by phone.

20 Defendant Peter Santilli has executed a waiver of
21 appearance.

22 Defendant Jeff Banta has executed a waiver of
23 appearance.

24 Defendant Sandra Anderson has executed a waiver of
25 appearance.

1 Defendant Wesley Kjar has executed a waiver of
2 appearance.

3 Defendant Neal Wampler has executed a waiver of
4 appearance.

5 Defendant Jason Blomgren has executed a waiver of
6 appearance.

7 And Defendant Eric Flores has executed a waiver of
8 appearance.

9 I will also note for the record, your Honor, that
10 evidently Defendant Geoffrey Stanek is not yet present in the
11 courtroom but will, however, be appearing shortly.

12 Thank you.

13 THE COURT: Well, let's confirm for the record that
14 as to those defendants you've named, who've waived appearances,
15 each of their counsel is present.

16 MR. KNIGHT: Thank you.

17 I believe they are, your Honor. I can name them for
18 the record, if you would like.

19 THE COURT: Please do that.

20 MR. KNIGHT: Thank you. Appearing on behalf of
21 Shawna Cox is counsel Tiffany Harris.

22 Appearing on behalf of Defendant Peter Santilli is
23 Tom Coan.

24 Appearing --

25 MR. COAN: Good morning, your Honor.

1 MR. KNIGHT: Appearing on behalf of Defendant Jeff
2 Banta is Robert Salisbury.

3 MR. SALISBURY: Good morning, your Honor.

4 MR. KNIGHT: Appearing on behalf of Defendant Sandra
5 Anderson is Tyl Bakker.

6 MR. BAKKER: Good morning, your Honor.

7 MR. KNIGHT: Appearing on behalf of Defendant Wesley
8 Kjar is Jim Halley.

9 MR. HALLEY: Good morning, your Honor.

10 THE COURT: Appearing on behalf of defendant Neil
11 Wampler is Lisa Maxfield.

12 MS. BAGGIO: Your Honor, good morning. Amy Baggio
13 appearing for Ms. Maxfield this morning.

14 THE COURT: Thank you.

15 MR. KNIGHT: On behalf of Defendant Jason Blomgren is
16 Robert Rainwater.

17 MR. RAINWATER: (Raising hand.) Good morning.

18 MR. KNIGHT: And on behalf of Defendant Eric Flores
19 is Ernie Warren.

20 MR. WARREN: Good morning, your Honor.

21 THE COURT: Good morning.

22 With respect to Jake Ryan --

23 MR. KNIGHT: Yes.

24 THE COURT: -- is he personally present?

25 MR. KNIGHT: I believe he is present.

1 MR. MERRITHEW: Your Honor, represented by counsel
2 Jesse Merrithew. He has not yet made his first appearance --

3 THE COURT: As I understand.

4 Good morning, sir. I asked that you be brought to
5 the courtroom so you could simply observe the proceedings.
6 Officially, they don't start as to you until you're formally
7 presented this afternoon on the magistrate judge. The record
8 should note he's here for the defendant.

9 All right. Continue with the other appearances,
10 please.

11 MR. KNIGHT: Thank you, your Honor.

12 Those are all of the appearances with respect to the
13 defendants who have waived appearance today.

14 THE COURT: And?

15 MR. KNIGHT: And with respect to those who are
16 present with counsel in the courtroom, your Honor, Defendant
17 Ammon Bundy is present with counsel, Michael Arnold and Lissa
18 Casey.

19 MS. CASEY: Good morning, your Honor.

20 THE COURT: You needn't stand, folks, unless you want
21 to.

22 Go ahead.

23 MR. KNIGHT: Defendant Jon Ritzheimer is present with
24 counsel Terri Wood.

25 DEFENDANT RITZHEIMER: (Raised hand.)

1 MS. WOOD: (Nods head.)

2 THE COURT: Joseph O'Shaughnessy is not present in
3 the courtroom. Counsel of record, Amy Baggio, is present on
4 his behalf.

5 For the record, Mr. O'Shaughnessy is in the district
6 of Nevada.

7 Defendant Ryan Payne is present in the courtroom with
8 counsel Rich Federico.

9 Defendant Ryan Bundy is present, acting on his own
10 behalf in the courtroom with the assistance of Ms. Ludwig.

11 Brian Cavalier is present in the courtroom with
12 counsel Todd Bofferding.

13 (Hands raised by Defendant Cavalier and
14 Mr. Bofferding.)

15 MR. KNIGHT: Jason Patrick is present in the
16 courtroom with Andrew Kohlmetz.

17 DEFENDANT PATRICK: Good morning, Catherine and David
18 (speaking to audience).

19 MR. KNIGHT: Defendant Duane Ehmer is present in the
20 courtroom with counsel Dave Audet.

21 MR. AUDET: Good morning, your Honor.

22 MR. KNIGHT: Defendant Dylan Anderson is present in
23 the courtroom with Sam Kauffman.

24 Defendant Sean Anderson is present in the courtroom
25 with counsel Matthew McHenry.

1 MR. McHENRY: Good morning, your Honor.

2 MR. KNIGHT: Defendant David Fry is present in the
3 courtroom today with counsel Celia Howes standing in for
4 Mr. Olson.

5 MS. HOWES: Good morning.

6 MR. KNIGHT: Defendant Kenneth Medenbach is present
7 in the courtroom today acting on his own behalf with the
8 assistance of Matt Schindler.

9 Defendant Blaine Cooper is present in the courtroom
10 with counsel Krista Shipsey.

11 Defendant Corey Lequieu is present in the courtroom
12 with counsel Roman Pagan.

13 Defendant Darryl Thorn is present in the courtroom
14 with counsel Laurie Shertz.

15 MS. SHERTZ: Good morning, your Honor.

16 MR. KNIGHT: And that is it, your Honor.

17 THE COURT: All right. Thank you. So we are
18 assembled for the April status hearing in this matter.

19 Before we begin, I want to remind all present that
20 pursuant to the longstanding policy of the judicial conference
21 and consistent with that policy, the local rule of this court,
22 Rule 83-14, no recordings of any type are permitted within the
23 courthouse itself and specifically within this courtroom.

24 Any person who is observed seeking to record these
25 proceedings will be removed from the building.

1 UNIDENTIFIED DEFENDANT: No First Amendment.

2 THE COURT: The official record of today's proceeding
3 is being taken by the court's reporter. Counsel and the media
4 are well advised as to how to obtain a transcript of the
5 proceedings.

6 We are going to begin with addressing calendaring
7 matters, the first of which is the scheduling of a trial date,
8 dates.

9 I sent to all counsel yesterday an agenda of the
10 matters we'll be addressing today, and I intend to proceed in
11 its order.

12 The first issue we need to address is whether it is
13 necessary for the court to set any more than one trial date.
14 All defendants presently are named in one Indictment. It will
15 be an enormous effort for all concerned to participate in a
16 jury trial. It will be a difficult process to select a fair
17 and impartial jury one time, not to mention multiple times.

18 There are many witnesses I understand the Government
19 and the defendants will want to bring to trial. The Court is
20 determined to exercise its discretion in a way that respects
21 the right to a speedy trial, one that is fair. But at the same
22 time, I am duty-bound to ensure that resources are not wasted,
23 that the burden we place on jurors and witnesses is not undue,
24 and that we get to the conclusion of a trial or trials as soon
25 as practicable.

1 So I want to hear the parties' positions with respect
2 to why the Court should consider setting anything but one trial
3 date in the first instance.

4 For the Government, on that point.

5 Mr. Gabriel.

6 MR. GABRIEL: Yes, your Honor.

7 The Government's position is that one trial date is
8 appropriate at this time, and September 7th should be that
9 trial date.

10 After pretrial motions are litigated, specifically
11 the substantive motions in June, if -- if the Court sets that
12 schedule, then the Government believes at that time it would be
13 appropriate for the Court to entertain motions to sever.

14 But before plea negotiations, before the parties know
15 what evidence will be coming in at trial, before the parties
16 have the full scope of discovery with respect to relative
17 weight of evidence and other factors that are considered in a
18 motion to sever, we believe that a single trial date is
19 appropriate.

20 Additionally, your Honor, we believe that the
21 pretrial schedule, as suggested by the Court in yesterday's
22 e-mail, should be undertaken by all parties together. And that
23 is another reason to hold the trial date on September 7.

24 At a later point, your Honor, the Government would be
25 prepared to -- to offer the Court its final opinion on whether

1 there should be more than one trial, but at this time we
2 believe one trial is the correct route.

3 THE COURT: All right. Thank you.

4 Who is addressing this on behalf of defendants?
5 Anyone?

6 MR. ARNOLD: I have a position, your Honor.

7 THE COURT: Yes, Mr. Arnold.

8 MR. ARNOLD: Mike Arnold for Mr. Bundy. We agree
9 with the position to the extent that we cannot come to a
10 decision regarding anything until we get a representation from
11 the Government that their **Brady** obligations have been met and
12 we've received all of the discovery. And we'll address that,
13 too, regarding the motion time lines. But our investigation is
14 incomplete, and it will probably continue after receipt of
15 additional discovery from the Government.

16 THE COURT: All right. Does anyone else have a
17 comment on that point?

18 Excuse me. Ms. Shertz was first and then Mr. Bundy.
19 Go ahead.

20 MS. SHERTZ: Thank you, your Honor.

21 I think part of the problem is we don't have a joint
22 position at this point as far as the defense.

23 I object to the trial date in September. I don't
24 think that we can have a fair trial if it goes in September.
25 The defense is doing everything we can to coordinate, to put

1 our resources together, to pool resources to try to reduce the
2 workload on each lawyer to ensure that we each meet our
3 constitutional requirements to these defendants. And I don't
4 think it's possible by September.

5 I also don't think the motions deadlines that the
6 Court set out yesterday -- or the day before, forgive me, in
7 the e-mail, are realistic. We still don't have discovery. The
8 Government's provided discovery to the panel office that hasn't
9 yet been provided to the defense. And that assumes that we
10 don't have other cases that we also have constitutional
11 obligations to meet, which every lawyer in this courtroom does.

12 So I object to the dates, both on motion deadlines
13 and the current trial date as unrealistic and unconstitutional.

14 AUDIENCE MEMBER: Yes.

15 THE COURT: Counsel -- I'm sorry. Mr. Bundy, go
16 ahead.

17 DEFENDANT RYAN BUNDY: Yes, your Honor. I do
18 maintain my rights to a quick speedy and fair trial. However,
19 I cannot agree to a specific trial date and/or a motion
20 schedule today because I'm not being afforded the tools and
21 equipment to prepare my defense the same as others, being that
22 my incarceration is withholding me from -- from these things.
23 I have not yet received any discovery at all, to my person.
24 And -- and continually I am being inhibited from communicating
25 with my legal team and -- and with others, that I need to, to

1 be able to build a proper defense. And until these tools, and
2 so forth, can be afforded me, I am -- I'm crippled. And so a
3 fair trial is not being afforded to me because of these
4 cripplings right now.

5 And so until these things can be remedied -- and I do
6 have a motion prepared -- or not quite prepared to address this
7 issue that I will be presenting to the Court. But I cannot
8 agree to a trial date or a motion schedule at this time.

9 THE COURT: Ms. Ludwig, have you had access to the
10 discovery?

11 MS. LUDWIG: I've had access -- (coughing), excuse
12 me, to the materials that are generally available but not the
13 materials that were described by Ms. Shertz as being kind of
14 in -- still in the stage of being in the --

15 THE COURT: And with respect to the material you have
16 had access to, have you begun a process to work with Mr. Bundy,
17 so that he can use those materials?

18 MS. LUDWIG: We're in the preliminary stages of that,
19 your Honor.

20 It's difficult because of the time limitations and
21 because of the lack of any kind of digital access that
22 Mr. Bundy would have currently.

23 I have been in contact with the jail. And as he
24 mentioned, I think he will be preparing and filing a motion
25 with my assistance, requesting the Court to direct the marshals

1 to afford him more access to resources.

2 THE COURT: All right. Well, I'll take that up in
3 due course.

4 Yes, sir.

5 DEFENDANT RYAN BUNDY: Well -- and, for instance, I
6 could go into more detail to that. Simply not having a decent
7 pen or a decent paper or a chair to sit on when I write. Or
8 not being able to communicate. Even here, I put in a kite
9 for -- to have some copies made, and it was denied to me,
10 saying that I should go through my standby counsel. And yet I
11 can't obtain my standby counsel easily. And she's got
12 schedules such that she can't just come to me at the drop of a
13 hat. And so I'm continually -- continually a problem.

14 THE COURT: So I understand the issue, and I look
15 forward to hearing the motion. Remember it needs to be subject
16 to conferral with opposing counsel before it's filed.

17 All right. Who else wants to be heard on that? Yes.

18 MS. WOOD: Your Honor, I just want to join in what
19 Ms. Shertz has told the Court.

20 I want to make sure the Court understands that the
21 Government's -- I think -- earliest date for completion of
22 discovery or substantial discovery was around the end of May.
23 We don't have discovery yet, and we don't have a -- a vendor to
24 get discovery out to us and that is still being worked on.

25 So the problem that defense counsel is having is that

1 we want to operate efficiently. We don't want to try to send
2 investigators out talking to people when we don't have all of
3 the discovery and we haven't formulated a plan.

4 We can't -- can't intelligently prepare motions
5 without the thought of maybe we're going to have to submit a
6 second round on the same issue because there may be information
7 in discovery that affects this motion. And so the problem is
8 we need discovery first. We need to be able to conduct a
9 defense investigation. We need to -- to continue to work
10 together, which takes a tremendous amount of time. You can
11 imagine, with 25 lawyers. And now the Court wants us to confer
12 in real time with three Government lawyers. And so --

13 THE COURT: No, not with three.

14 MS. WOOD: Okay.

15 THE COURT: I imagine one of you, representing one
16 issue, will be conferring with one of the Government's lawyers.
17 I never suggested any one lawyer had to confer with each and
18 every assistant U.S. attorney on this. There needs to be
19 conferral for the very reason you're talking about, however.
20 Because I'm confident that when there is conferral, issues are
21 narrowed and time -- time that would otherwise be used
22 inefficiently in addressing matters that actually aren't in
23 dispute or can be resolved by agreement would be wasted.

24 So conferral is an absolute requirement for every
25 motion unless it's an emergency, in which case I'll deal with

1 it.

2 MS. WOOD: And I -- you know, I agree completely with
3 the Court. Again, it's just always a matter of even with two
4 lawyers, one for the defense and one for the Government, being
5 able to connect.

6 So all of these things take time. And -- and my
7 position, your Honor -- and particularly with Mr. Ritzheimer --
8 there's a large volume of -- of video recordings. And he was
9 an activist in some unrelated matters that I believe the
10 Government would be using as prior-bad-act type evidence in
11 this case. It's already been raised in connection with the
12 detention hearings. So those -- those recordings are perhaps
13 500 hours, is what we understand from the Government. And
14 there's no way set up yet to even figure out which ones of
15 those apply to Mr. Ritzheimer or to the other clients.

16 And so my realistic assessment of being able to be
17 prepared, and given the fact that I also represent other
18 clients and I have obligations to them and they were
19 preexisting -- I have not taken on any new cases since
20 appointed to Mr. Ritzheimer's case at the beginning of March.

21 So to be able to get that all done, to be effective,
22 I believe that -- that April of 2017 is a realistic trial date
23 for a 25-defendant trial.

24 THE COURT: Thank you.

25 Yes, Mr. Pagan.

1 MR. PAGAN: Good morning, your Honor.

2 I -- you know, I want to maintain my client's
3 interest in speedy trial, but I want to speak about the motion
4 schedule --

5 THE COURT: I'm not talking about motions yet. I'm
6 talking about a trial date. I can adjust motion schedules. I
7 will be backing them up. I will be modifying them as we go.
8 The issue now is a trial date.

9 MR. PAGAN: Fair enough, your Honor.

10 I -- one of the things I think that we're dealing
11 with, your Honor --

12 THE COURT: I can't hear you, sir.

13 MR. PAGAN: I don't think the Court is aware of
14 when -- the last time we were here, the Government noted that
15 there were 3500 police reports or pages of documents that were
16 given to us.

17 In the weeks that have followed, what we have learned
18 is that the Government intends to give us -- and I'm
19 speaking -- this is kind of secondhand, with a report from one
20 of the defense attorneys in conversation with the Government,
21 between 5 and 10 terabytes of information, including up to
22 500,000 pages of police reports that they say is kind of one of
23 the first waivers.

24 That may be a high number. But all we know is that
25 we're -- the 3500 pages that we received is literally the tip

1 of an iceberg, at this point. And so it's very difficult, I
2 think, for all of us counsel here to say today what exactly
3 we're going to be dealing with. So even the discussion at this
4 point about the trial date, I think, may be premature for a lot
5 of the attorneys here and we're kind of shooting in the dark.

6 THE COURT: I think you're repeating points already
7 made, Mr. Pagan. So I appreciate the point. If there's a new
8 point any counsel wishes to make, please let me know;
9 otherwise, I want to move on.

10 Yes, Mr. Medenbach.

11 DEFENDANT MEDENBACH: I would like to join in
12 everything Ryan Bundy said. All the complaints he has are the
13 same complaints I have. I haven't been able to get access to
14 anything. I would truly like to be released to have time to do
15 this kind of stuff. You didn't allow me to respond on our --
16 our hearing we had last -- on the 11th of March. But -- I'm
17 sure most of the people, if they get released, then we would
18 have more time to do all of this kind of stuff. But I'm not --
19 I desire a trial in September.

20 THE COURT: Yes.

21 MR. WARREN: Your Honor, I have a murder trial that
22 starts the first week of September, before the Honorable Henry
23 Cantor, Multnomah County.

24 THE COURT: Mr. Warren, would you e-mail to the clerk
25 the name of the case and the case number, please.

1 MR. WARREN: Yes.

2 THE COURT: Thank you.

3 Counsel.

4 MR. AUDET: Thank you. Dave Audet on behalf of
5 Mr. Ehmer, your Honor.

6 I join in the other concerns specifically raised by
7 Ms. Shertz.

8 In addition, if the trial is to start in October
9 [sic], I anticipate that it would extend well into October.

10 I have other personal and professional conflicts for
11 the month of October.

12 THE COURT: Yes, Counsel.

13 MR. KOHLMETZ: Just briefly, your Honor. I join in
14 the objections raised by Ms. Shertz and Ms. Wood. I cannot --
15 my professional evaluation in my client's case, I cannot be
16 ready for trial in September.

17 MR. KAUFFMAN: Sorry, your Honor. The Court may well
18 be aware of this, but there's another 20-some-odd-defendant
19 trial scheduled in September before Judge Simon.

20 THE COURT: Well, he told me that he was adjusting
21 the trial date in light of the expectation that this matter
22 would be set for trial in September. He told me there was a
23 conference in the case to be had yesterday.

24 Is that right?

25 MR. KAUFFMAN: I was not at a conference yesterday

1 but --

2 MR. BAKKER: Your Honor, that was actually a
3 different case before Judge Simon.

4 THE COURT: I think he's well aware of this case and
5 working around it.

6 MR. KAUFFMAN: Very good.

7 THE COURT: Yes, Counsel.

8 MS. SHIPSEY: On behalf of Mr. Cooper, I would also
9 object to a September trial date.

10 Your Honor, one of my concerns that I think we'll be
11 talking about after the status hearing is the lack of funding
12 for many of the CJA attorneys, which I know we will -- we will
13 work on. But, at this point, there are some of us who don't
14 have adequate funding for our investigators yet. That's in the
15 pipeline.

16 I specifically have concerns -- we would like to join
17 on the change-of-venue motion. There is a large venue request
18 in for that. I understand it's going to take several months to
19 get that data and be prepared to argue that motion.

20 But based on -- even the trial date -- I understand
21 the Court can adjust the motions, that the Court is wanting
22 that to be filed within less than two weeks. We wouldn't even
23 be able to file that before the trial date as it stands now,
24 your Honor.

25 I know Mr. Kohlmetz is going to talk further about

1 it, but that is a specific example that we have concerns about.
2 And, therefore, we would object.

3 THE COURT: All right.

4 MR. KOHLMETZ: Your Honor, I did talk to my proposed
5 expert yesterday.

6 He -- once funding was in place, the best estimate
7 would be 60 to 90 days before the data was available.

8 THE COURT: Everyone's going to need to work on a
9 different timeline. This case is not a usual case. Each
10 defendant has asserted a right to speedy trial, and that is the
11 priority here.

12 So I am not going to treat this case as if it's any
13 other case. I'm not going to put it at the end of the line of
14 all of your other work. It is the priority, and it will be set
15 as soon as practical.

16 If there are legitimate reasons why it cannot proceed
17 as set, then I'll hear them at the time. I appreciate you're
18 all concerned with meeting your responsibilities. I would
19 expect nothing less. But the point of having these regular
20 conferences is to move the matter forward. These gentlemen who
21 are in custody have been in custody since January. Those
22 lawyers who have been on the case have been on it since
23 January. I've been told for weeks there are motions to dismiss
24 that should be made, and there isn't any reason they can't be.
25 They don't require evidence. They don't require discovery. If

1 there are legal arguments to be made, they need to be made and
2 done now.

3 So we're going to move forward.

4 MR. BAKKER: Your Honor, I just wanted -- on behalf
5 of Ms. Anderson, I just wanted the record to be clear. She is
6 out of custody, and she is prepared to waive her speedy trial
7 rights. And I would second the concerns of Ms. Shertz and
8 Ms. Woods [sic], as far as the trial date goes.

9 THE COURT: Okay.

10 MR. HALLEY: Jim Halley, I just want to register my
11 concern about being able to effectively prepare for my client
12 under the circumstances.

13 THE COURT: May I say that a remark made by any
14 defense lawyer is deemed made by all of you.

15 You don't need individually each to repeat the same
16 point. It's been made eight times now.

17 Is there a new point any of you need to make?

18 THE COURT: Ms. Shertz?

19 MS. SHERTZ: I'm sorry, your Honor, I had a question.

20 I think that when we discussed the trial date
21 previously, you discussed two weeks for the defense case. The
22 other part of scheduling the trial date is I don't think that's
23 realistic. If you do the math, that's three hours per
24 defendant for their case.

25 I think these gentlemen want their day in court, and

1 so I think it's probably more like five or six weeks for the
2 defense case in court by the time you include defendants
3 testifying and possible experts that the defense have been
4 conferring and discussing. So that also affects scheduling.
5 It also backs this case into a case that's over a year old,
6 that's been scheduled -- I don't know if somebody else can help
7 me out when we got the trial dates in the 15-44 case. But
8 it's --

9 THE COURT: Is that Judge Jones' case?

10 MS. SHERTZ: It's been scheduled for more than six
11 months, and our pretrial conference --

12 THE COURT: No, his case was a September trial
13 setting that just got moved to November.

14 MS. SHERTZ: And it's -- our pretrial conference is
15 scheduled to start November 16th. And if you add up the --

16 THE COURT: You know what, Ms. Shertz, if we're in
17 trial, then you can't be in two places at once. And even Judge
18 Jones would respect that. All we can do is the best we can do.
19 Your point is noted. Please take a seat.

20 Mr. Arnold, what did you want to --

21 MR. ARNOLD: I just wanted to point out --

22 THE COURT REPORTER: One at --

23 THE COURT: One at a time. And, sir, if you are not
24 going to be quiet, you'll be removed from the room.

25 (Speaking to Defendant Patrick.)

1 MR. ARNOLD: You know, I don't join in on all of the
2 statements by defense counsel. I just want to put on the
3 record that we do not agree that September, at this point,
4 is -- is inappropriate. It's our position --

5 THE COURT: You made that point, Mr. Arnold.

6 MR. ARNOLD: I know. But your Honor said that
7 anything that other attorneys said --

8 THE COURT: No. You made a separate point that you
9 agreed with September.

10 Please add only new matter.

11 MR. ARNOLD: The only new matter I have is I would
12 like the Court to tell -- or at least instruct the Government
13 to get more resources to do more things, to get us the
14 information quicker. It's not --

15 THE COURT: Excuse me.

16 MR. ARNOLD: Yes, your Honor.

17 THE COURT: Behind you, there is talking going on,
18 and I cannot hear when this happens.

19 If you cannot remain silent, you'll be removed from
20 the room, sir. Do you understand me?

21 DEFENDANT PATRICK: I was just asking if there was
22 going to be more violent outbursts by the judge.

23 THE COURT: I'm asking the man to removed from the
24 courtroom now.

25 Counsel, you'll observe -- take him to a -- take him

1 to a video, so he can watch the room -- the proceedings.

2 THE MARSHAL: Let's go.

3 THE COURT: Unless -- hold on a minute. Sir, if
4 you'll agree to be quiet while I try to conduct this
5 proceeding, you can remain.

6 DEFENDANT PATRICK: Excuse me?

7 THE COURT: If you will agree to be quiet, you may
8 remain. Will you be quiet?

9 DEFENDANT PATRICK: Is there going to be more
10 violence in the courtroom?

11 THE COURT: This is not violence. I'm trying to
12 conduct a proceeding.

13 DEFENDANT PATRICK: There was a violent outburst, and
14 this is violence.

15 THE COURT: Sir -- all right. Marshals, step away
16 from the defendant. I'll give him one more chance. You can be
17 quiet and stay, or you can keep talking and you'll leave. It's
18 up to you.

19 Now, Mr. Arnold, you were saying.

20 MR. ARNOLD: Yeah, I appreciate the conferrals and
21 the efficiency by defense counsel. I just understand that the
22 Government has the resources and the power available to -- I
23 can't speak for the efforts they're taking. I'm sure they're
24 doing their best with the resources they have. But they need
25 to get main justice involved, they need to get other resources

1 involved. We would appreciate that.

2 THE COURT: Mr. Arnold, I've addressed that issue.
3 Anything else?

4 MR. ARNOLD: No, your Honor.

5 THE COURT: All right.

6 MS. WOOD: Your Honor, just on behalf of
7 Mr. Ritzheimer, we would also waive speedy trial. I want the
8 Court to know that.

9 THE COURT: Ms. Baggio?

10 MS. BAGGIO: Thank you, your Honor.

11 On behalf of Mr. O'Shaughnessy, my client will not
12 waive his speedy trial rights, and we are requesting a trial at
13 the earliest possible date.

14 Thank you, your Honor.

15 THE COURT: Do you have a suggested date, other than
16 those that have been offered by others?

17 MS. BAGGIO: My original proposal, your Honor, was --
18 was included in the joint status report that was --

19 THE COURT: September?

20 MS. BAGGIO: That was October, your Honor.

21 And the Court said, no, it needed to start earlier
22 than that. I will work with whatever schedule --

23 THE COURT: Mr. Arnold, I can't hear with your mic
24 on. So if you're going to confer, turn it off, please.

25 MR. ARNOLD: Thank you, your Honor.

1 THE COURT: Say again, Ms. Baggio.

2 MS. BAGGIO: I will work with whatever schedule the
3 Court deems appropriate.

4 I will be prepared in September, if the Court orders
5 it to begin in September.

6 THE COURT: We'll all do the best we can do. I know.

7 All right. Anything else that's new on the issue of
8 the setting of the trial date?

9 There are many competing interests here.

10 I understand that there may be presented in the
11 future reasons why not all defendants should go to trial at the
12 same time.

13 There may be motions to sever filed. There may be
14 issues that actually materialize regarding the concerns counsel
15 are expressing as to an ability to actually be ready for trial,
16 which in turn depends upon the Government meeting its
17 obligation to provide discovery timely and in a manner that
18 allows each of the defendants to move forward.

19 Today, I am going to set a jury selection to begin on
20 Wednesday, September 7.

21 And until further -- further order of the Court, that
22 is a trial date for all defendants.

23 I will take up motions to sever or motions to
24 continue once there is a real record where a lawyer can make a
25 point and establish that there isn't any way to go forward.

1 For now, the priority is the speedy trial right of
2 each of the accused, and I am insisting that everyone keep that
3 paramount.

4 If a lawyer, after the exercise of all due diligence,
5 cannot be ready, then you'll have to make that motion, and I'll
6 take it up at the time.

7 But we are going to press forward now, premising our
8 preparation -- all of us -- on jury selection beginning
9 September 7.

10 Now, let's move to the issue of motions.

11 As I already referenced, there have been points made
12 at both prior proceedings that there are legal motions
13 defendants wish to make. They need to be made, and I assume
14 you've been preparing them.

15 The idea of requiring you to file a motion that you
16 just think of today, tomorrow will not be reasonable, and I
17 would not be suggesting that. But from the very first
18 proceeding I was told there will be legal arguments, dismissal
19 arguments to be made, and that they needed to be addressed
20 promptly. In the status report, I was told there were four
21 grounds for a dismissal motion.

22 I need someone to tell me what those grounds are now,
23 so that I can take that into account as I set a schedule for
24 motion practice.

25 Who among the defendants can address that?

1 Ms. Baggio.

2 MS. BAGGIO: Thank you, your Honor.

3 I would state that the basis of the four motions, as
4 referenced, was because of the potential legal arguments
5 related to motions to dismiss counts 1, 2, 3, and 6. And
6 that's why it's listed as four separate.

7 We are coordinating and organizing amongst ourselves
8 to separate --

9 THE COURT: What are the grounds for dismissal of
10 Counts 1, 2, 3, and 6 that defendants are anticipating raising
11 in motions?

12 MS. BAGGIO: Well, your Honor, I can speak to Count 1
13 because that is the one to which I'm assigned. And I am
14 researching the question of the constitutionality of 18 U.S.C.
15 Section 372.

16 I believe that the statute is ripe for a challenge as
17 to vagueness because it results in the criminalization of
18 constitutionally protected conduct, including the right to
19 freedom of speech, assembly, as well as to possess a firearm.

20 THE COURT: All right.

21 MS. BAGGIO: I'm also looking with regard to that as
22 an overbreadth challenge as well. That is the one that I'm
23 working on, your Honor.

24 I can't speak to the specifics of the other counts.

25 THE COURT: All right. Presumably some one of your

1 colleagues can.

2 Who -- who is working the dismissal theories as to
3 Count 2? Anyone?

4 MR. ANDERSEN: Your Honor, this is Benjamin Andersen.
5 I have been informed -- I was in the process of researching
6 that. I don't have anything to present to the Court at this
7 time about what the --

8 THE COURT: Count 2 is the carrying of a firearm in
9 furtherance --

10 MR. ANDERSEN: Right.

11 THE COURT: -- of a crime of violence; that is, Count
12 1.

13 MR. ANDERSEN: Right, your Honor. I do believe there
14 could be some vagueness challenges to that, as to what is a
15 crime of violence, how it applies to another specific count.

16 Potentially, it could be overbroad, based on some of
17 the same issues that Ms. Baggio raised. It's constitutionally
18 protected, ability to possess a firearm. That could be another
19 issue there that could be raised, your Honor, if you're talking
20 prospectively.

21 THE COURT: Actually I misspoke. Count 3 is the
22 count I referenced, the carrying of the firearm in connection
23 with the crime of violence, which was Count 1.

24 Count 2 is possession of a firearm and dangerous
25 weapons in federal facilities.

1 MR. ANDERSEN: Right, your Honor. And I was sort of
2 addressing -- I apologize. I was generally addressing that
3 count as well, the possession of firearms in a protected
4 facility -- or, excuse me, in a facility, could be a grounds
5 for a constitutional challenge as that also hinges on the
6 rights of citizens to possess arms.

7 It could potentially be vague as to what exactly is
8 meant by a federal facility. There are some factual issues I
9 think that relate to that as well, but I believe there could be
10 a legal challenge.

11 THE COURT: All right. Count 3. Who, among the
12 defense counsel, was looking into a motion to dismiss on that
13 count?

14 MS. BAGGIO: Your Honor, I believe that Ms. Hay and
15 Mr. Olson are taking the lead on that.

16 THE COURT: Okay.

17 MS. BAGGIO: And I have some understanding, but if
18 the Court --

19 THE COURT: Well, can you tell me what you think the
20 gist of the concern is?

21 MS. BAGGIO: Yes, your Honor. The gist of the
22 concern is that an 18 U.S.C. 372 charge, which is the
23 cross-reference count in the 924(c), is not a crime of
24 violence.

25 THE COURT: Well, that ought to be a discrete

1 argument to raise --

2 MS. BAGGIO: Right.

3 THE COURT: -- and present.

4 And then Count 6 is the depredation of Government
5 property count. Who -- who was going to be addressing
6 dismissal on that count?

7 MS. BAGGIO: Your Honor, I believe there's some
8 discussion among the defense counsel as to who's going to do
9 that, but I understand it also relates to a potential vagueness
10 challenge.

11 THE COURT: Okay. All right. Let me get a list of
12 the other -- so-called other group 1 motions, that the parties
13 had alerted me to, in front of me. Give me a moment.

14 (Pause, referring.)

15 THE COURT: I understand the venue change motion may
16 depend upon data that the parties will want to develop. So I
17 understand that may need some -- some time to put together.

18 Of the other motions with -- that the parties listed
19 in -- under the so-called group 1 and group 2, are any of them
20 dependent upon evidence -- or put another way, are they -- how
21 many of them are the kinds of motions Ms. Baggio was just
22 discussing?

23 Purely legal arguments that don't -- don't turn on
24 access to discovery. Whether Count 1 is the kind of crime of
25 violence as to which a Count 3 charge can be brought is a

1 question of law. It does not depend at all on what the
2 Government's evidence is.

3 Counsel?

4 MR. KOHLMETZ: Your Honor, there are some federal
5 jurisdictional issues that I've been charged with looking into.
6 They are legal issues. They are complicated. I have asked for
7 funding for a law clerk to assist me with those, but I -- those
8 are legal issues --

9 THE COURT: So my point remains. The matter's been
10 pending eight weeks, and these legal matters are legal matters
11 that you're all charged with addressing. We need to go
12 forward.

13 MR. KOHLMETZ: And I am going forward, and I have a
14 pending final request --

15 THE COURT: I am going to be setting a schedule for
16 the filing, then, of purely legal motions. And then we'll set
17 another date for those motions that the parties contend depend
18 upon more discovery coming. And then we'll have a final round
19 of pretrial motions, conceptually consistent with the way I've
20 laid out.

21 Before you speak, Ms. Baggio was still on her feet.

22 (Mr. Arnold sitting.)

23 MS. BAGGIO: Thank you, Judge Brown.

24 As the Court described, that's why we separated them
25 into round 1 and round 2. And the thought is that either the

1 round 2 motions are going to require some sort of evidentiary
2 hearing or they rely on our ability to review discovery prior
3 to be able -- to figure out whether we're going to have a
4 motion or not.

5 So when we were communicating amongst ourselves and
6 trying to brainstorm on what possible motions there are, it may
7 be that once I get discovery and look at a particular report, I
8 say, Okay, this is no longer a legal issue. So the point was
9 simply to place-hold potential --

10 THE COURT: Sure, I get that.

11 MS. BAGGIO: Okay. But that's why we separate them
12 into 1 and 2.

13 And when the Court -- I believe the Court had asked
14 about the possibility of shifting some of the round 2 motions
15 into round 1.

16 THE COURT: Right.

17 MS. BAGGIO: I would state that, from my perspective,
18 I would ask the Court not to do that. We did spend a lot of
19 time coming up with this schedule, and there was a reason why
20 we asked for them to be set later, your Honor.

21 THE COURT: Good enough.

22 Counsel.

23 MR. ARNOLD: Your Honor, additionally, some of the
24 conflict in a purely legal motion would include a
25 jurisdictional issue we have regarding Article 1, Section 8,

1 Clause 17 of the Constitution.

2 There's some legislative -- quote/unquote, framers of
3 legislative history that was not included in some of the prior
4 Supreme Court analysis and -- in our opinion. And it needs to
5 be brought to the attention of the Court. And it is a purely
6 legal matter, but some of these -- actually, they're all
7 historical documents from the time of the framers. They're
8 available and referenced in at least one law -- law review
9 article that I found that talked about the enclave clause
10 versus the property clause and how -- how -- what the framers
11 intended.

12 And I believe I'm going to have to actually go and
13 locate at least an online database that hopefully has some of
14 these scanned in. But according to the law review article,
15 most of them were not discovered, that may change the
16 perception of enclave-versus-property clause analysis until
17 some time prior to the '90s, I think, is what the law review
18 article said.

19 So that is going to take some time. And I only bring
20 that up to the Court because a large portion of our time is
21 responding to leads and evidence and witnesses and coordinating
22 an investigation while simultaneously, of course, doing these
23 other things. So I don't anticipate that our motion to dismiss
24 on those grounds will be available in the first round because
25 of that.

1 THE COURT: Well, you're not going to have a choice.
2 You'll do one round of motions that are legal motions; there
3 will be one round of motions that depend upon discovery and
4 evidence; and then we're going to deal with the trial motions.
5 Because in order to respect the defendant's right to a speedy
6 trial, we need to move in an orderly way. If the Court didn't
7 have jurisdiction, that would need to be addressed immediately;
8 not eight months, five months, or six months down the road.

9 So you've got your arguments. You make them as best
10 you can, like any other lawyer does after conferral with
11 opposing counsel, and then we move forward.

12 So it sounds to me like those who would be moving
13 feel that April 20th, the deadline I set for the first round,
14 is too soon.

15 MR. McHENRY: Yes.

16 THE COURT: All right. My premise in setting April
17 20 as an initial deadline for those motions was in hopes that
18 those legal motions could be heard at the May status hearing.

19 If we don't file them by April 20 and have responses
20 on a very quick turnaround, then I likely can't hear them until
21 June, and that is getting very close to pushing other issues.

22 So I think what I will do is direct you -- I want you
23 all to confer about a date between the May status hearing and
24 the June status hearing when we could have a hearing on
25 motions -- on the round 1 motions, so that you're not pushed as

1 hard as I had anticipated in the 4-20 suggestion.

2 I want two different dates that you suggest, so that
3 I can consider the Court's availability on other matters, and
4 then I will back up from that date. I'll find a hearing date.
5 I'll back up from that date to allow the filing of all the
6 legal motions, filing of a response. Again, no replies because
7 we simply will need to move forward.

8 I'm inclined to limit the length of these motions for
9 purposes of requiring a concise explanation. And to the extent
10 more page length is needed for particular development, then you
11 would have leave to ask for it before the filing deadline.

12 But, again, it's a management decision I'm making in
13 order to ensure that we just get to the point of the motion,
14 whatever it is.

15 If the conspiracy count is not capable of being a
16 crime of violence, one ought to be able to say that in ten
17 pages of substance or less.

18 The standards are what they are. We don't need pages
19 and pages and pages of rhetoric. We need law and the point and
20 a response and an opportunity to be heard.

21 So defendants, pick your representatives. I don't --
22 I don't need to know who they are. Mr. Gabriel will be the
23 coordinator on the Government's side for identifying two
24 different hearing dates after the May status date and before
25 the June status date on which hearings can be conducted.

1 The Court is not available from May 31 to June 8, so
2 you cannot use those dates.

3 And then I want that date submitted to me by
4 Friday -- well, what's today? Let's say by Monday, noon.

5 In the meantime, you better get going on your
6 motions. It won't be April 20th, but you need to get going, so
7 that you're ready to file your law motions on the -- by the
8 date indicated. And then I'll adjust, therefore, on the other
9 motions as well. We may have to wait until May -- at the May
10 status hearing to -- to set a firm date on those, by which I
11 think it's fair to expect the Government will have resolved
12 most if not all of these complaints about discovery. Because,
13 in the end, it does rest at the Government's table to get to
14 the defendants the discovery they're entitled to, and we can't
15 simply say you have to wait weeks. It just isn't acceptable.

16 And I do agree with Mr. Arnold that the Government
17 has to provide the resources necessary to meet these demands.
18 And if there aren't enough, I trust, Counsel, you'll be
19 addressing that at your end. But you simply have to move to
20 put your opposing counsel here in a position where they can
21 proceed.

22 So I won't set any more motion dates yet. I do want
23 to move forward on a jury plan. And I think the best way to do
24 that is for me to propose an initial plan about the numbers and
25 manner and dates of summonsing, the manner in which I conceive

1 a fair jury selection process can occur on the present
2 assumption of everyone participating.

3 So I had set in my e-mail message to you April 20 as
4 a day when I can get that to you. I think that's probably now
5 going to move out a couple of weeks, in light of your
6 persuading me that the legal motions need to move out a bit.
7 But I will be giving you an initial framework around which I
8 want discussion and then legal analysis about the parameters
9 I'm going to be setting, to the extent they're -- there may be
10 objections or better ideas on how to do this. I think you've
11 come up with some very good suggestions.

12 My general expectation is that we will need to
13 summons a very large jury pool in the first instance. We will
14 need to do screening for hardship and availability in the
15 summons process so that we can quickly and efficiently excuse
16 potential jurors who have a true hardship and cannot serve in
17 the time expected.

18 And then once that pool is reduced to a more
19 meaningful number, to summons them in groups that are
20 manageable, to come to court to complete a written
21 questionnaire; into which you clearly will have input. So that
22 you will have answers to a number of the questions as to the
23 specific jurors' backgrounds, attitudes, experiences, and the
24 like, before any voir dire starts.

25 And I appreciate that once those questionnaires are

1 completed, we will need a break in time sufficient for counsel
2 to review those questionnaires, so that you can hopefully come
3 to some agreement about jurors who obviously should be excused
4 at that stage because they're not qualified or have amplified
5 on hardships. So that we would, again, reduce the pool, if
6 possible, by agreement or by court ruling.

7 And then once we have a pool of jurors who have
8 completed the questionnaire, as to whom you know their
9 biographical backgrounds and attitudes, we would have a voir
10 dire process. But it's -- given the nature of the case --
11 going to be a different process than the ones that happen in a
12 one-defendant case. It's just the way it has to be, to manage.
13 But that's what I have in mind.

14 So I'll be giving you more detail on that and then
15 allowing and requesting your joint feedback, so that we can get
16 a jury plan in place.

17 The reason it's necessary to do this, to start
18 working on this now, is if we do expect jurors to show up to
19 fill out questionnaires on the 7th of September, then we'll
20 need to start identifying that larger pool, going through the
21 process of the true hardship challenge and moving people
22 through that -- that exercise.

23 So let's go to the discovery issues.

24 MS. BAGGIO: Your Honor, excuse me.

25 THE COURT: Yes.

1 MS. BAGGIO: If I may, with regard to the jury plan,
2 in the Court's e-mail from yesterday, the Court stated that the
3 parties would be able to offer comments no later than April the
4 13th.

5 THE COURT: Oh, well, that was a mistyping.
6 Disregard.

7 I thought I was going to be sending it out April
8 20th.

9 MS. BAGGIO: Correct.

10 THE COURT: And I did -- you're right. I did say
11 send comments by April 13.

12 If -- if you all would like to send a joint statement
13 about things you want me to include in the first draft, that's
14 fine. I'll set a new deadline for that.

15 But I have already seen the -- the submission made in
16 the joint report. I think Mr. Anderson did a lot of the
17 background work there, and I'm hearing your points.

18 You are going to have a dispute over the number of
19 challenges, and those things. Those are legal matters we'll
20 take up later.

21 What I have more in mind right now is simply trying
22 to set the steps that need to happen in order that we get a
23 reasonable return on the summonses. We get a process in place
24 so that jurors fairly can be considered. But at the same time
25 respecting their concerns, too, about the length of time and

1 their participation in this particular case.

2 So do -- do you think it would be helpful for
3 additional submissions, beyond the comments I've made, in
4 response to what was submitted?

5 MS. BAGGIO: I would like to have that opportunity.

6 THE COURT: All right. Then you take charge, with
7 Mr. Anderson, jointly.

8 I'll pick a date -- once I get through all of these
9 other dates -- for you to do that, and I'll include a
10 consideration of it.

11 But then it needs to be a joint submission, so the
12 Government would need to be looped in too.

13 Did you have anything you wanted to add to that,
14 Mr. Andersen?

15 MR. ANDERSEN: Just -- thank you, your Honor. One
16 thing.

17 In my discussions with the clerk's office, in order
18 to effectuate a plan that would include at least one or
19 potentially two rounds of questionnaires, I think that it would
20 be important to get any such mailing, or anything like that, to
21 the clerk's office -- I believe -- sometime in mid-June
22 potentially, or -- or maybe even earlier.

23 THE COURT: That's why it's on the docket for -- for
24 us to think about now.

25 I think, conceptually, the first communication to the

1 random pool of jurors will be fairly generic. It will include
2 a questionnaire that addresses hardship challenges. It would
3 not be the substantive questionnaire.

4 My concerns there have to do with the need that each
5 juror completes the questionnaire personally, when it comes to
6 those substantive issues all of -- all of counsel will be
7 concerned with. And there's been concern when these
8 case-specific questionnaires are sent that people other than
9 the potential juror concludes them, and that isn't acceptable.

10 So I think probably we will have to only do screening
11 for time and hardship, employment issues, health issues, time
12 commitments, that kind of thing, in the first kind of
13 questionnaire; and not -- not specific to the case. And then
14 we'll need a -- a case-specific questionnaire that covers the
15 kinds of issues that are unique to this case in particular, as
16 well as the other issues.

17 Jurors' attitudes, jurors' exposure to the
18 information that has been publicly available about the
19 controversies, and so forth.

20 MR. ANDERSEN: I think that presents a good
21 framework. I would also like to alert the clerk -- or the
22 Court to -- I believe that the defense will be asking that the
23 jury pool be -- be chosen from the entire District of Oregon.
24 And maybe the general practice that for trials, they are --
25 they -- potential jurors are chosen just from the -- just from

1 the -- from the -- the -- what is it?

2 MR. RAINWATER: Division.

3 MR. ANDERSEN: Thank you. From the division.

4 And I realize we're not litigating this right now,
5 but this is -- I anticipate that we will ask that the jury will
6 be pooled from the entire state.

7 THE COURT: You'll have an opportunity to make the
8 request. Of course, it will need to be supported with
9 reasoning and authority and conferral with the Government's
10 counsel.

11 Actually, before we go to discovery, I did want to
12 address this issue that Ms. Baggio has raised repeatedly about
13 access to her client.

14 I did ask the Government look into this and see if
15 the issue couldn't get solved. Who -- who did that?

16 MR. BARROW: Your Honor, I did do that.

17 I reached out, as ordered, to the District of Nevada,
18 and just learned a little bit more about Mr. O'Shaughnessy's
19 status.

20 He is being housed in what is known as CCA7 Nevada
21 detention center. That is a private facility, but it contracts
22 solely to house federal detainees.

23 I -- at my request, AUSA Nick Dickinson reached out
24 to the marshal's coordinator with that facility to ask about
25 Mr. O'Shaughnessy's case. That phone call occurred this

1 morning, so I haven't heard back about it. But I understand,
2 from talking to Ms. Baggio, that she was able to have some
3 contact with Mr. O'Shaughnessy this week.

4 I told Ms. Baggio that I would continue to work with
5 her, Nevada, and the marshals in Nevada to assure that there is
6 no issue with access.

7 Nevada told me that they don't typically have a
8 problem of this nature with people they have at that facility.
9 So they don't anticipate there being issues.

10 They also have not heard from Mr. O'Shaughnessy's
11 Nevada attorney, that she has had any issues with contact with
12 Mr. O'Shaughnessy. But I did make a commitment to Ms. Baggio
13 that this is unacceptable, and we will make sure it's not an
14 issue going forward.

15 I know she has concerns about what's happened in the
16 past, but I'm just focused on fixing things for the future.

17 THE COURT: Ms. Baggio, anything you would like to
18 add or any suggestion that you may want me to consider?

19 MS. BAGGIO: Well, your Honor, I do believe this is a
20 fundamental -- fundamentally important issue.

21 And I have been without contact with my client since
22 his arrest on March the 3rd until this week.

23 And I have made repeated attempts when he was housed
24 at a private prison in Arizona, as well as making requests
25 through our local U.S. Attorney's Office to help me set up a

1 phone call to speak with him. I was never able to speak with
2 him or communicate directly when he was in Arizona.

3 His Rule 5 attorney was willing to pass certain
4 messages to him on my behalf, but obviously that's not
5 effective communication.

6 Upon his transfer to the District of Nevada and his
7 placement at the new private prison, I have also been unable to
8 communicate with him, despite repeated attempts. And that is,
9 again, up until this week.

10 I would like the record to reflect, your Honor -- and
11 this came up in the hearing -- I believe it was on the 22nd --
12 with regard to the transport order. It has been a nightmare.
13 It has been so difficult for me, under the constraints that I'm
14 operating, to be able to talk with him. This is fundamentals
15 of representation --

16 THE COURT: Ms. Baggio, your point is not disputed.
17 I'm trying to get to the bottom to solve it, and you've made
18 this issue very clear.

19 How did it happen this week that you got contact?
20 How did that work out?

21 MS. BAGGIO: Thank you, your Honor. Thank you.

22 Well, with the private prisons, in order to speak
23 with an inmate, the inmate tries to call you. And then you
24 hear that it's this person's voice on the phone. And then if
25 you want to speak with them, you press 1.

1 Well, at that time, the call -- it's being handled by
2 another private subcontractor phone company. And I have
3 tried -- both when he was in Arizona and then in Nevada -- to
4 set up this phone service so that I could speak with my client;
5 at exorbitant rates. It's just outrageous. And I have been
6 unable to do so until this week.

7 And what happened, your Honor -- and I think this is
8 important -- is that after spending a lot of time on this --
9 and this goes to the Court saying, you know, you guys need to
10 be working on motions; you need to be doing these other
11 things --

12 THE COURT: Ms. Baggio, my points are for the record
13 as a whole. And I will simply note that, as everyone in this
14 room knows, you have carried a huge share of the burden. And
15 it's appreciated by everyone. I understand. I'm trying to
16 figure out what it is I can do --

17 MS. BAGGIO: Understood.

18 THE COURT: -- to assist.

19 MS. BAGGIO: Thank you.

20 So this week, when I was able to set up a
21 relationship with this private company, I asked, Will my
22 telephone calls be recorded? And the person who set up the
23 phone conversation said, Send us a letter on your letterhead,
24 by fax or e-mail, and it will automatically no longer be
25 recorded. I sent it both ways.

1 At that time my client called me, and he said -- for
2 the first time we're speaking, your Honor. And he -- I said,
3 Now, I don't know this private company, but they're telling me
4 this isn't recorded. And he says, Well, what I'm looking at,
5 at the phone here at the prison, it's telling me it's being
6 recorded.

7 Later, yesterday -- yesterday, your Honor, I spoke
8 with someone who was actually at the prison, the prison
9 employee. And she was very kind and understanding. She
10 didn't -- she wasn't familiar with this private company that's
11 providing the phone service, and she didn't understand who it
12 was to whom I sent my letterhead.

13 And she said to me, No, that decision as to whether
14 it's recorded or not happens within the prison. So I'm not
15 sure who you were talking to or who's making a decision outside
16 the prison. She says, As far as the prison is concerned, we
17 will now mark it so that your cell phone and your work number
18 will no longer be recorded, but I can't speak to whatever else
19 might be going on.

20 Therefore, your Honor, I have made the two contacts
21 that I know of, in order to establish nonrecorded phone calls.
22 But --

23 THE COURT: Do you believe you had a nonrecorded
24 conversation with your client then, after this happened?

25 MS. BAGGIO: I have not spoken with my client after

1 the communication with the prison yesterday.

2 THE COURT: All right.

3 MS. BAGGIO: So I'm supposed to speak --

4 THE COURT: Is there something you think I can or
5 should do?

6 MS. BAGGIO: (Raising hands up.)

7 THE COURT: I would say that means no at the moment.

8 MS. BAGGIO: Well, I --

9 THE COURT: If you think there's something specific
10 the Court can do, you have leave to contact me directly, with a
11 representative of the Government. Because this is a priority,
12 I am committed to getting it resolved.

13 If, for example, the transport order that I did enter
14 stands and if the marshal returns Mr. O'Shaughnessy to Oregon
15 with the other defendants who I directed could be transported,
16 then that's a way that you will be back in personal contact.

17 If something else interferes, have you considered
18 flying there to go speak with him?

19 MS. BAGGIO: Yes, your Honor. There's lots of moving
20 pieces, and I was hoping he might be released on the Nevada
21 case and that would also solve these problems. And I will -- I
22 will wait. I'm hoping, when I talk to him tomorrow, that the
23 phone call will not be recorded. If it is, I will come back to
24 the Court and -- with Government counsel, and address this.

25 THE COURT: So Mr. Barrow is charged to get this

1 problem solved. So your first resource is he.

2 And if you believe a court order is needed to move
3 the matter forward, then you two contact me directly.

4 MR. BARROW: We'll do that, your Honor.

5 THE COURT: All right.

6 MS. BAGGIO: Thank you.

7 THE COURT: So give me just one moment here. I want
8 to move to the discovery issues now.

9 (Pause, referring.)

10 MR. PAGAN: Your Honor?

11 THE COURT: Just one minute, please. I asked for a
12 minute, please.

13 (Pause, referring.)

14 THE COURT: Mr. Pagan, what did you want to add
15 before we move to this?

16 MR. PAGAN: Yeah --

17 THE COURT REPORTER: Is your mic on, please?

18 THE COURT: Your microphone needs to go on, please,
19 so we can hear you.

20 MR. PAGAN: So item No. 5, 6, your Honor, or -- I
21 think No. 6, on the last issue. Regarding the tentative
22 schedule and the filing of motions, and the other things that
23 we're talking about, your Honor, I see in this -- the Court's
24 proposed plan here, I know some things have been moved. But
25 one thing I think we need to talk about here is that it appears

1 the Court wants us to file pretrial motions in or about July.

2 And one of the questions I have for the Court is if
3 the Court would be willing, in this particular instance --
4 considering the unique nature of this case and the fact that we
5 still don't have the majority of discovery -- is moving up a
6 requirement on the Government to provide counsel with a
7 proposed exhibit list and witness list. Because I think to
8 require defense counsel on, you know, 500,000-plus statements,
9 et cetera, to kind of shoot in the dark as to what the
10 Government might be doing, the Court might be receiving a bunch
11 of motions that are theoretical --

12 THE COURT: Mr. Pagan, I didn't make myself clear.
13 The only deadlines I'm going to set, after today, on the
14 motions are for the first-round motions. I'm going to consider
15 other scheduling with respect to these other ideas.

16 Clearly the deadline by which a defendant needs to
17 move to exclude Government evidence depends upon the defendant
18 knowing what the Government's case is going to be. I am
19 limited by the **Jencks** Act. I'm also enabled to suspend the
20 trial at any point when I believe a defendant hasn't had a fair
21 opportunity to prepare because the Government didn't give
22 advance notice.

23 I'm going to use those parameters to move the matter
24 forward. So I understand the point.

25 MR. PAGAN: And I guess --

1 THE COURT: I'm not making the decision today.

2 MR. PAGAN: Right. And I guess I'm just planting the
3 seed, your Honor, that we discussed.

4 THE COURT: It's planted, Mr. Pagan. The tree is
5 growing. It's getting sun, water, nourishment; unlike the rest
6 of us.

7 All right. Discovery. With respect to the
8 protective order that was signed after the last hearing, there
9 were two defendants who did not sign on to the stipulation.

10 Ms. Baggio was one, for the reasons we've already
11 noted. Mr. Ammon Bundy reserved objections.

12 Last night, a very long submission, Mr. Arnold, was
13 made, which was really outside the scope of the scheduling
14 order I set at our first hearing. Your arguments should have
15 been included in the joint status report in a concise way. You
16 didn't give me enough time consider them because you went
17 outside that direction.

18 So for today, your written filings are what they are.
19 To me, they looked essentially repetitive of the point you made
20 the last time we were in court. I'm going to ask the
21 Government for a timeline within which they can file a written
22 response, and then we'll move on.

23 So, Mr. Bundy?

24 DEFENDANT RYAN BUNDY: I just wanted to add my name
25 to this same motion that you just spoke about from my brother

1 Ammon. And add that new information is -- is pending and --
2 pertaining to that and related to an inspection of -- the grand
3 jury inspection.

4 Anyway, I wanted to make on the record that I had
5 my -- that objection.

6 THE COURT: I'll note that Mr. Bundy joins the
7 objection made by Ammon Bundy to the protective order that is
8 in place.

9 I do want a Government written response to the
10 written objections that were filed and an estimate of when that
11 can happen.

12 Mr. Gabriel?

13 MR. GABRIEL: We can file a response within seven
14 days, your Honor.

15 THE COURT: All right. April 13.

16 And then I'll take the issue of those objections
17 under advisement on April 13 and resolve them by written order.

18 Now, the discovery management issues, generally.
19 We've already heard many complaints that defense -- defendants
20 are not getting what they need, and they're not getting it soon
21 enough. So I need the Government to tell me what is being done
22 to address those legitimate concerns.

23 The case cannot move forward unless the Government
24 produces the material that the defendants are entitled to have
25 and does it in a way that allows defense counsel enough time

1 meaningfully to access the material and to meet the schedule
2 that I'm trying to set in order to respect each defendant's
3 right to a speedy trial.

4 Who's on discovery?

5 Mr. Barrow.

6 MR. BARROW: Thank you, your Honor. Just by way of a
7 status report on what has been produced, we have produced six
8 volumes of discovery. Volumes 1 and 2 were produced
9 individually to all of the defendants. Obviously, we have some
10 new defendants now, and we will endeavor to get them that
11 discovery as soon as possible.

12 But Volumes 3, 4, 5, and 6 were provided to the CJA
13 coordinating counsel, Jennifer Horvath, through a secured hard
14 drive. And that was done in two separate productions, the
15 latest being this week. In total, the six volumes of discovery
16 amount to 48,000 files and roughly ten gigabytes of data. Or,
17 I'm sorry, roughly 100 gigabytes of data.

18 So we do believe that is a substantial production,
19 but it is only the beginning. And we are continuing to produce
20 materials and have virtually daily meetings regarding the
21 discovery.

22 The statement that there are 500,000 documents
23 pending is not accurate. I don't know where that came from.

24 We do anticipate a large amount of data, but a lot of
25 that data is driven by things like videos, that -- that will be

1 produced as soon as we can, and I think quite quickly. I would
2 anticipate the first of those going out in another week or so.

3 When we produce these hard drives to Ms. Horvath, we
4 simultaneously provide all defense counsel with an index to
5 those materials, as well as the discovery letter that describes
6 what the materials are.

7 We have always said that -- that we anticipate that
8 we will be substantially complete with discovery by May 15th.
9 As this Court well knows, there are things that trickle in
10 after that date. But that has always been our target date for
11 substantial compliance with the discovery orders.

12 As to the objections to the process by which the
13 discovery is produced, it's always been my understanding that
14 that process of producing the materials to Ms. Horvath was
15 designed to promote efficiencies both from the Government's
16 production of the materials, as well as the defense use of the
17 materials.

18 The vast majority of the attorneys, as far as I'm
19 aware, have -- haven't had an issue with that.

20 I have had extensive conversations with Ms. Wood
21 about her objections. She has requested that we provide a hard
22 drive directly to her. And had good conversations with why the
23 Government believes that that is not as efficient as
24 processing -- or providing the discovery through Ms. Horvath.

25 We both share the same goal of getting the materials

1 to the defendants as quickly as possible.

2 THE COURT: Why can't the Government provide, to
3 those defendants who request, separate hard drives as well?

4 MR. BARROW: We can, your Honor, but that will delay
5 the process of providing the materials.

6 THE COURT: Tell me the specifics.

7 MR. BARROW: Specifically, your Honor, the Government
8 is under policy directives to encrypt hard drives. That means
9 that it isn't as fast as -- as people that don't deal with
10 those encryption technologies or don't deal with that policy
11 may believe. It is not a matter of setting a computer up to
12 copy a hard drive and coming back in the morning and having it
13 done. That has been suggested that that's what we should do.
14 That simply isn't how it works with our encryption policies and
15 our equipment.

16 I could probably do it at my house faster, but that's
17 not the way it works in the Government.

18 (Laughter.)

19 MR. BARROW: To give you an example --

20 (Laughter.)

21 AUDIENCE MEMBER: How much does that cost?

22 MR. BARROW: To give you an example, your Honor, the
23 estimate of production for a 50-gigabyte production for one
24 hard drive is a day and a half. And that, of course, involves
25 a lot of what we call QC, or quality control. And --

1 THE COURT: So are you saying, in short, that it
2 would take a day and a half to get Ms. Wood that which you've
3 given Ms. Horvath?

4 MR. BARROW: It would take a day and a half to give
5 Ms. Horvath 50 gigabytes.

6 THE COURT: I'm asking --

7 MR. BARROW: It would take -- I'm sorry, your Honor.

8 THE COURT: Go ahead.

9 MR. BARROW: It would take, therefore, three days to
10 provide two hard drives. Ms. --

11 THE COURT: My point is you've already given that to
12 Ms. Horvath.

13 A day-and-a-half worth of production would generate
14 another drive.

15 MR. BARROW: It would, your Honor.

16 THE COURT: All right.

17 MR. BARROW: And then there's another request for
18 Mr. Rainwater for another drive.

19 So that, again, is an additional period of time.

20 THE COURT: So it seems to me that can be done.

21 MR. BARROW: It can be done.

22 THE COURT: That for those defendants who believe
23 they cannot get the material quickly enough through the Federal
24 Defender's Office, it seems to me the Government could
25 generate, through a day-and-a-half process, a response to each

1 of those requests.

2 MR. BARROW: Let me be clear, your Honor. We can do
3 that.

4 THE COURT: All right.

5 MR. BARROW: But for each defense attorney that
6 requests that 50 --

7 THE COURT: Right now I've heard of two. Mr. Barrow,
8 stay on point.

9 MR. BARROW: I anticipate that there will be more.

10 THE COURT: Is there any reason that can't be done
11 this week, then?

12 MR. BARROW: There isn't a reason that a production
13 couldn't be duplicated in that time frame. But if we do it 26
14 times --

15 THE COURT: I didn't say you were doing it 26 times.
16 I've heard of two objections.

17 MR. BARROW: And I guess I would throw it out to the
18 defense attorneys if anyone else is --

19 THE COURT: We're not going to discuss here the
20 conferral that should have happened before.

21 So you're telling me for that which has been produced
22 to the federal defender, for each defendant who would want a
23 copy means sequentially one-and-a-half days.

24 MR. BARROW: For a 50-gigabyte production, that is
25 correct, your Honor.

1 THE COURT: Well, you keep qualifying what you're
2 saying.

3 Are you saying that which you produced was 50
4 gigabytes?

5 MR. BARROW: No. An estimate of producing 50
6 gigabytes, which is half of what's been produced up until now,
7 that that process of producing a single -- let's suppose it's
8 Volume 7. If Volume 7 is --

9 THE COURT: Mr. Barrow we need to be far more
10 general.

11 That which you've given Ms. Horvath, Volumes 3, 4, 5
12 and 6 --

13 MR. BARROW: My estimate on what it would take to
14 provide 3, 4, 5, and 6 --

15 THE COURT: To one lawyer?

16 MR. BARROW: -- to one lawyer would be -- let's call
17 it about two days, your Honor.

18 THE COURT: All right.

19 MR. BARROW: And, yes, we can do that.

20 THE COURT: And if it was more than one lawyer, if
21 would be sequentially another two days, and so forth?

22 MR. BARROW: Correct.

23 THE COURT: All right. I understand your point.
24 Ms. Shertz.

25 MS. SHERTZ: Your Honor, one thing I don't know if

1 the Government's aware of and I'm certain you're not aware of
2 is the panel office has -- and I want to distinguish between
3 the actual federal defender's client and the panel office.

4 THE COURT: Yes.

5 MS. SHERTZ: The panel office has this hard drive.
6 We have not been provided all of the information that's on the
7 hard drive.

8 THE COURT: I know that. That's been clear in the
9 materials.

10 MS. SHERTZ: Okay. So then when the hard drive goes
11 to Ms. Wood and Mr. Rainwater, they will have all of the
12 materials that the rest of us are still waiting for.

13 THE COURT: Ms. Shertz, if you would just let me
14 finish, I was about to ask whether there were defendants other
15 than Ms. Shertz [sic] and Mr. Rainwater who felt the need to
16 obtain the hard drive directly before waiting for its cloud
17 posting -- is what I understand will happen under the vendor
18 process that's being organized. Is there any other defendant?

19 DEFENDANT RYAN BUNDY: (Raises hand.)

20 THE COURT: One, two, three.

21 Okay. See? We can solve the problem.

22 MS. SHERTZ: There's another issue, your Honor --

23 THE COURT: Yes.

24 MS. SHERTZ: -- that may simplify things.

25 On a prior case involving this new encryption -- the

1 encryption is something new that we've been facing -- I would
2 like to say for less than six months. I'm sure Mr. Barrow can
3 correct me if I'm wrong on that date. The Government's
4 encryption, once we get encrypted materials from them, takes
5 approximately forever for us to encrypt -- unencrypt on our
6 end. Hours to unencrypt sometimes.

7 My understanding, from having talked to Susan Cooke,
8 the lead discovery person at their office, is they can get
9 special permission from Washington, D.C., to provide
10 nonencrypted discovery to the defense. I would also request
11 that that be done in this case.

12 Some of the material has come to us unencrypted. It
13 then speeds the copying process for the Government, where it
14 won't take them two days to provide that material. It speeds
15 things on our end. And, quite frankly, a lot of what they're
16 providing, it's already subject to a protective order. So the
17 encryption seems to be belt and suspenders, and I don't --
18 Velcro closures on top of already complicated discovery.

19 THE COURT: Then you are assigned to work with
20 Mr. Barrow to see if this issue can be resolved by agreement.

21 MS. SHERTZ: Thank you. I will do so.

22 THE COURT: All right. So access to discovery is
23 complicated by the process that Mr. Barrow was describing. A
24 process that initially was suggested on behalf of all
25 defendants at the beginning of the case and one that I endorsed

1 with the premise that it would be most helpful to the
2 defendants.

3 The bottom line is defense counsel need access to the
4 materials yesterday. And if the current system isn't working,
5 I need a suggestion to -- a solution that will get the lawyers
6 what they need yesterday. So I -- I can't order that which I
7 don't know will accomplish things.

8 Ms. Shertz?

9 MS. SHERTZ: I think, your Honor, at -- there's an
10 item on the agenda for the ex parte that will hopefully answer
11 some of these issues for you.

12 THE COURT: All right. I'm -- I'm willing to
13 facilitate in any way possible the -- this process, to the
14 extent I meaningfully have the authority to do so. But we
15 can't simply just go in circles on the issue.

16 Ms. Wood.

17 MS. WOOD: Your Honor, I think a compromise position
18 for right now would be to have the Government make one
19 additional encrypted, if it must, copy, and provide that to the
20 CJA office here, so that individual lawyers, such as myself and
21 Mr. Blomgren's attorney, could provide a hard drive there, and
22 just get it cloned.

23 It -- it -- it doesn't -- that -- that would at least
24 give us a copy that can go to the vendor --

25 THE COURT: All right. So, again, hold -- no, I'm

1 not going to negotiate this now.

2 Ms. Shertz and now Ms. Wood and now Mr. Rainwater,
3 the three of you are the committee. You work with Mr. Barrow,
4 and you get this resolved. And if you need an order from me,
5 let me know. But we're not going to spend this time
6 negotiating this.

7 All right. So that issue -- that is to say, access
8 to that which is being produced -- should be addressed. And it
9 is a high priority. And I need to know -- I need to know that
10 it's addressed.

11 So I'll -- I want a status report by next Wednesday
12 from you lawyers, you three -- Shertz, Rainwater, Ms. Wood --
13 and Mr. Barrow, that tells me what's been accomplished and lets
14 me know if I need to do anything to authorize facilitating this
15 in any other way.

16 So I get the problem needs solving. You're in the
17 position to solve it.

18 Are there -- now, there's the larger question about
19 the other discovery not produced. You're talking about May 15.

20 Why -- why that long, Mr. Barrow?

21 MR. BARROW: Your Honor, again, I think we'll have
22 productions weekly or biweekly. It's just a deadline for us to
23 get -- you know, substantial compliance is everything. You
24 know, we need that time to ensure that we have uncovered every
25 rock and really gotten them everything.

1 We are -- as we always do -- going well beyond our
2 obligations because we think that's the most efficient. But it
3 does take time to make sure that we've contacted, for example,
4 every local jurisdiction who may have participated in this
5 event, to make sure that they didn't generate materials that
6 are pretty far beyond our immediate control but may be
7 discoverable. So that's why we're asking for the time.

8 THE COURT: And, in the meantime, when is your next
9 production going to be ready?

10 MR. BARROW: Your Honor, we're meeting tomorrow to
11 work on exactly the time frame for that. But, again, I -- we
12 produced it as soon as we can. So I anticipate, you know,
13 weekly or biweekly productions.

14 THE COURT: So I think it is probably provident for
15 me to have regular status reports on this discovery issue, and
16 I've now constituted a committee of defense attorneys who are
17 the committee to work on behalf of all defendants to facilitate
18 discovery problems.

19 Mr. Barrow, it looks like you're the --

20 MR. BARROW: I'm the lucky --

21 THE COURT: You're the one for the Government.

22 So what I want are weekly status reports, every
23 Wednesday, to let me know what's happened and whether there are
24 issues. And if there are issues the parties believe the Court
25 needs to address, I'll call a hearing to address those

1 promptly, so that we don't wait a month before we can solve the
2 problem.

3 MS. SHERTZ: May I just inquire of how you want the
4 committee then to deal with the pro se defendants on discovery
5 issues?

6 THE COURT: Through their -- through their standby
7 counsel, who will be talking with the pro se defendants, who
8 have a right to make decisions and participation. But standby
9 counsel are functionally the conveying agent.

10 MS. SHERTZ: I just wanted to make sure. Thank you.

11 THE COURT: Yes. You don't need to go to jail to
12 speak to Mr. Medenbach.

13 MS. SHERTZ: I would not. Thank you.

14 THE COURT: Speak with his standby counsel, who will
15 speak with him and convey information back. Same with
16 Ms. Ludwig.

17 All right. Are there other discovery issues you want
18 me to know about right now, beyond taking them up in this
19 weekly status report process?

20 Yes, Mr. Bundy.

21 DEFENDANT RYAN BUNDY: I want to make an objection to
22 the method of information coming. I want that information to
23 come directly to me. I want to be directly involved with the
24 meetings and schedules, and so forth, rather than going through
25 my standby counsel. My standby counsel, as counsel, does not

1 replace me. And I want to be able to be involved in the
2 communication with the other co-defendant counsels, and et
3 cetera. I do not want to be left out of that loop.

4 THE COURT: I understand that's what you want. It's
5 not possible. With you in custody and your having chosen to
6 represent yourself, there are limitations on what can happen.

7 Ms. Ludwig will convey everything to you, and you
8 will convey to her back. And she will be your agent in
9 communicating your decisions. She is not making decisions.
10 She is the vehicle of communication.

11 DEFENDANT RYAN BUNDY: And I do want to note that
12 that is a very difficult vehicle, and it is inhibiting my right
13 to free trial because I'm not being treated fairly and -- as
14 other defense counsels. And so I want to make that objection
15 noted.

16 THE COURT: It's noted, Mr. Bundy. Thank you.

17 All right. We have on the agenda an issue of access
18 for defense counsel to the courthouse. And I'm not quite clear
19 what the issue is. I did ask the marshal, this morning, to
20 observe how long it was taking per counsel to clear security.
21 And the report I got was minutes; two to three minutes to clear
22 security today when counsel came through. I don't know if the
23 access issue involves a place here at the courthouse where
24 lawyers want to be able to meet or store -- I just don't know
25 what the issue is.

1 So, Ms. Shipsey, would you please enlighten me.

2 MS. SHIPSEY: I would, your Honor. On behalf of all
3 of the defendants, defense counsel, there are two issues here.
4 One was we were requesting courthouse ID that -- to make it
5 easier to get in, not just for a hearing today but for trial,
6 anticipating that there will be -- we will have small breaks;
7 and, therefore, there will be a group of us trying to all get
8 in at the same time.

9 Also during trial, we're going to presumably have
10 carts of trial documents, just things that make it harder. So
11 we are asking --

12 THE COURT: I do have on my list the question of
13 finding a space in the courthouse where all defendants can
14 leave things secure -- securely and safely.

15 The issue has to do with physically where we are
16 going to conduct the trial. The selection of the space to
17 conduct the trial drives, in part, what other spaces are
18 available.

19 But it's my expectation that a courtroom in the
20 building, of this size, will be available only to defendants
21 and their defense team to leave things, to store things, to
22 have a secure expectation. But I have to work out access
23 issues, just with the locking and the like.

24 There are attorney rooms available on the eighth
25 floor, but they're intended for much smaller numbers of you,

1 and it doesn't seem to me feasible.

2 So I'm trying to find a space that can be dedicated
3 to all defense counsel, where you'll be assured that your work
4 can stay here; you won't have to move it in and out of the
5 building, and it will be secure.

6 So that issue is already on -- being worked on.

7 MS. SHIPSEY: Thank you, your Honor. And that was
8 the second point. The first point I would just report on that
9 I did make a call on behalf of all of us whether or not we
10 could get courthouse ID, and we were told that was not
11 available.

12 THE COURT: I understand that was the response. I'm
13 also working on it. I think the issue is a different issue
14 when it does comes to trial in terms of the time demands on
15 everyone and the need to respect the jury's time and to be able
16 to have everybody in and moving. And so it's -- it's still an
17 open issue that I'm working on with the marshal.

18 But, as of today, it did not appear to me, from what
19 was reported, that any lawyer was delayed unduly at security
20 today.

21 MS. SHIPSEY: It didn't appear so, your Honor.

22 THE COURT: All right. Thank you very much.

23 All right. Let's move to the motion that is docket
24 No. 357, for a stay of the order I entered, authorizing the
25 marshal to honor the habeas corpus writs ad prosequendum for

1 some certain of the defendants.

2 I wanted first to ask whether -- and I understand,
3 Mr. Federico, you're basically the lead on behalf of defendants
4 for this issue.

5 MR. FEDERICO: Yes, your Honor.

6 THE COURT: I'm wondering whether -- you or
7 Mr. Knight -- you have had any direction from the Ninth Circuit
8 as to timing or its consideration of the interlocutory appeal.

9 MR. FEDERICO: Your Honor, I'll speak first to that.

10 As part of the circuit rule, you have to alert that a
11 the motion is coming, emergency consideration. That has been
12 done. We've been in communication with all of the filings. We
13 have not yet heard back, though, from the circuit as to whether
14 or not, one, they're going to grant a request for emergency
15 consideration; two, any subsequent briefing schedule or when
16 they would seek to resolve the issue.

17 THE COURT: And you've made clear to the circuit that
18 under the existing order the marshal is authorized to start
19 transporting as of April 13?

20 MR. FEDERICO: Yes, your Honor.

21 THE COURT: All right. Have you heard anything else?

22 MR. KNIGHT: Nothing different, your Honor, no.

23 THE COURT: All right. Mr. Knight, Mr. Federico
24 argues the district court lost jurisdiction to even consider --

25 No, you're the one arguing that.

1 Let's go back. Sorry.

2 MR. FEDERICO: Yes, your Honor.

3 THE COURT: You're arguing -- the Government was
4 arguing that the district court did not have jurisdiction to
5 stay its order because, with the interlocutory appeal, it was
6 the Government's position that substantively that matter has
7 now been divested.

8 You're relying on the Federal Rule of Appellate
9 Procedure 8 and its explicit contemplation that the district
10 court would consider the rule. Right?

11 MR. FEDERICO: Yes, your Honor. That is certainly
12 the starting point.

13 Also, I note I had a reply that was drafted that --
14 and then I saw the Court's e-mail that replies will not
15 typically be permitted. I only state that because I am
16 obviously prepared to orally state some case law and talk about
17 the Government's --

18 THE COURT: Let's start about jurisdiction first. Go
19 with that point. Then I would like to hear from Mr. Knight on
20 the jurisdiction issues. And then we will go to the merits, if
21 I'm persuaded I have the authority to consider this motion.

22 MR. FEDERICO: Yes, your Honor.

23 Regarding jurisdiction, the Court is correct.
24 Primarily, relying first on Federal Rule of Appellate Procedure
25 8(a), saying the district court in fact has priority over

1 jurisdiction. And I believe the Government's response somewhat
2 mischaracterized what the defense had filed; both in the Ninth
3 Circuit.

4 They said that we -- once we filed the notice of
5 appeal, the district court had been divested of jurisdiction
6 because we also sought a stay directly with the Ninth.

7 What we did with the Ninth was filed for a request
8 for emergency consideration and then stated, also, that we were
9 simultaneously filing for a motion to stay with the district
10 court. Those were filed on the same day.

11 And then said to the Ninth Circuit that if the
12 circuit court determines that it requires additional time to
13 resolve the matter and the stay hasn't been issued, then we
14 would request the Ninth Circuit to stay the district court
15 order.

16 In other words, the conditions are that if the
17 district court has not stayed it, the Ninth Circuit has said
18 they need more time to resolve, then we would ask the Ninth
19 Circuit to consider a stay.

20 Which is different than what -- the Government's
21 response in saying that we had just gone to the Ninth and
22 sought a stay directly.

23 So we believe under the -- the rule of appellate
24 procedure, the district court has, in fact, then priority
25 jurisdiction.

1 And I think also, your Honor, the cases cited by the
2 Government don't stand for the proposition that really what
3 we're asking the Court here is a procedural matter and not a
4 substantive matter. Because the case law they provided -- for
5 example, the **Griggs versus Provident Consumer** case from 1982.
6 And they said that the Court is now divested of jurisdiction
7 over, quote, the matter as being appealed. Well, the matter
8 being appealed is the transport order. We haven't asked the
9 Court for reconsideration of that order.

10 And -- and, likewise, other case law -- for example,
11 there's a case **In Re Thorp**, from the Ninth Circuit, from
12 1981 -- the citation for that, your Honor, is 655 Federal 2d
13 997. It says that the matter on appeal is a different
14 question, and the Court can consider those matters that are,
15 quote, in aid of the appeal, such as procedural matters. And
16 that's the way we view the current motion to the Court.

17 The other cases cited by the Government,
18 **Ortega-Lopez**, held that the Court lacked jurisdiction -- excuse
19 me, the district court lacks jurisdiction to correct a
20 sentence. Again, that's a substantive matter.

21 Likewise, the **Vromen** case, in that case it was the --
22 the Court held the district court lacked jurisdiction to
23 consider a reconsideration of probation revocation. Again, a
24 substantive matter. So we distinguish the jurisdictional
25 questions on that ground.

1 We believe the district court retains priority
2 jurisdiction to resolve the procedural question for now. And,
3 again, the substantive question as to whether or not the
4 transport should go forward is certainly a matter that we
5 concur with the Government is properly now left to the
6 appellate court.

7 THE COURT: Thank you, Mr. Federico.

8 Mr. Knight, on jurisdiction.

9 MR. KNIGHT: Thank you, your Honor.

10 With respect to jurisdiction, I think as a threshold
11 matter the parties agree what the rule is and what the cases
12 are. The difference is an interpretation of the facts.

13 And in this instance, to say that there's a
14 procedural and substantive difference is a distinction without
15 a difference. The procedure is the substance of the appeal.
16 The very idea that the basis of the appeal and the arguments
17 underlying the appeal relate to the transport itself and to the
18 stay and the attendant concerns about the deprivation of rights
19 with the movement of the defendants is the same as the
20 procedure. So there's no difference. So, to split hairs and
21 to claim that really there is a procedural issue before the
22 Court and a separate substantive issue now contained in the
23 appeal, we believe, is inaccurate.

24 And the cases that have been cited, we agree with.
25 And we would argue that their holdings do in fact bind this

1 Court and properly lay a factual and legal foundation for the
2 conclusions set forth in the brief; and that is, by virtue of
3 the arguments the defendants have made about the transport of
4 these defendants, this Court has been divested of jurisdiction
5 on this narrow issue.

6 THE COURT: All right. Well, let's move to the
7 merits argument, so that I have a full record here before I
8 have to decide this issue.

9 The Government filed its opposition on the merits.
10 Your primary grounds are ones that were actually argued in the
11 first instance, Mr. Federico, in opposition to the order.

12 So if there's something else you wanted to add or
13 emphasize, I'll hear from you and then from Mr. Knight.

14 MR. FEDERICO: Thank you, your Honor.

15 Yes. The starting point, I think the parties both
16 agree that the **Nken** factors from the Supreme Court would apply
17 to the motion to stay. I won't rehash the arguments, but will
18 sort of give an oral reply to the Government's response.

19 The first factor is the likelihood of success on the
20 merits. In fact, I don't think either party correctly -- or I
21 shouldn't say "correctly," but fully cited some case law that I
22 think gives a little more detail as to what that means.

23 For example, a case called **Leiva-Perez v. Holder**.
24 The citation for that is 640 Federal 3d 962. That is a Ninth
25 Circuit case from 2011. That case, the Ninth Circuit openly

1 acknowledged that there is uncertainty as to the exact degree
2 of what the likelihood of success has to be. And it stated
3 that the test was a substantial case for relief on the merits.

4 So what is a substantial case? I believe that in
5 this case we've easily met that threshold. I mean, as this
6 Court acknowledged, when the issue was brought to the Court's
7 attention, this is a very unusual circumstance with these two
8 complex trials simultaneously and these are some very weighty
9 cons -- constitutional rights at issue.

10 And so I'll just stand on the briefs that have
11 already been filed, as to whether or not there is a substantial
12 case for relief. But I just wanted to invite the Court's
13 attention to what the Ninth Circuit has said that standard
14 means.

15 As to the second factor of the irreparable injury,
16 again, the Court's order originally was that those -- any
17 injury or harm was premature. The Government's response, they
18 called it, quote, purely speculative.

19 I would say that the same Ninth Circuit case I just
20 cited also detailed that this particular factor of irreparable
21 injury is very individualized. It's very case specific. And I
22 think that is important here because of the unusual nature of
23 these circumstances. And -- and I would concur that we're
24 seeking to prevent a future infringement of rights. So,
25 inherently, the process is forward-looking.

1 But here, I think there is also some case law that's
2 informative, that states that when you bring the matter of
3 constitutional rights infringements to the Court's attention,
4 also it's telling as to what the review is.

5 For example, if you raise constitutional issues
6 pretrial versus post-trial -- and the analogy I'll give here is
7 **Brady**. The Ninth Circuit, in the **Price** case, at 566 Federal 3d
8 900 -- and that's a 2009 case -- said that on -- on appellate
9 review, if you claim there's been a **Brady** violation, you have
10 to make a showing of materiality. But when you're claiming
11 that same violation before it has been -- the trial has been
12 adjudicated, you don't have to show materiality. I think
13 that's again -- illustrates that when you bring the matter, in
14 terms of constitutional rights and infringement, that -- a
15 decision is made as to what -- the proper showing. Because we
16 have argued and would argue that the defendants need not show
17 prejudice at this point because it's a structural issue.

18 And I'm also going to defer to Mr. Arnold. I think
19 he has a comment regarding prejudice, as well.

20 In the Government's response, they stated that we
21 were not resting -- or, excuse me, that the terms of the
22 irreparable injury factor, that we're resting on an
23 unreasonable assumption that this Court -- the district courts
24 are incapable of fashioning, sort of, case management
25 procedures to protect the rights. And I think that, again,

1 sort of mischaracterizes what the harm is we're articulating.

2 In the opening brief that we have provided as an
3 attachment to the Court, we stated there is a body of case law,
4 the Sixth Amendment -- particularly, rights to effective
5 assistance of counsel -- that talks about basically breaks in
6 contact between defendants and lawyers -- and sometimes in as
7 short as 17 hours -- is found to be a violation of the Sixth
8 Amendment.

9 And so, really, as we said in the motion, we see
10 this -- or, excuse me, the opening brief in the Ninth Circuit,
11 is that the Government in the two districts within the
12 executive branch from the Department of Justice has asked the
13 Court to sort of referee and facilitate this process, which the
14 courts are capable of doing. But, on the other hand, the
15 defendants are the ones who suffer the harm from that.

16 And there's a concern here, in terms of harm, that
17 what is likely to happen is if they're transported to Nevada,
18 there's going to be substantial litigation time spent on who is
19 where and when, and what they're going to be doing there.
20 Because, as we've been discussing all morning, this is very
21 difficult and challenging to come up with a case management
22 order here, with the number of defendants. And I would just
23 imagine -- it's not even speculative -- that Nevada is going to
24 face the same problem.

25 Lastly, your Honor, regarding the third and fourth

1 **Nken** factors which, as the parties briefed, merge together
2 between the Government and the opposing party. And those
3 factors are the harm to the other party and the public
4 interest.

5 The Government stated in its response that its motion
6 for stay is inconsistent, and the defendants are being
7 inconsistent with their demand for speedy trial. And we would
8 state the opposite is true because what we are trying to do is
9 keep them here in Oregon, to keep their case on track.

10 And so that there is in fact -- trying to prevent any
11 events, such as a transport, that would interfere with their
12 case preparation in this case, here in the District of Oregon.

13 So not only do we see no inconsistency with the
14 demand for speedy trial, we believe a stay of the order in
15 seeking the appeal of the transfer order is in fact consistent
16 with the demand for speedy trial.

17 And so, your Honor, if I may also -- I just mentioned
18 a moment ago, I defer to Mr. Arnold. I think that he had
19 some -- a point he wanted to make regarding potential
20 prejudice.

21 THE COURT: Certainly.

22 Mr. Arnold.

23 MR. ARNOLD: Thank you, your Honor.

24 Regarding the issue of prejudice, my client has not
25 been transported yet, so he doesn't have any actual prejudice.

1 But I do have proof that it's more likely than not that if he
2 is transferred, there is likely to be prejudice.

3 I have an affidavit that we received after hours last
4 night, and it is essentially from a woman named Deborah
5 Reynolds. And she has been in contact with Peter Santilli --
6 who was transported previously -- on the phone.

7 And I have the affidavit. But I was just going to
8 read portions -- or read it by way of proffer, or I could give
9 it to the Court.

10 THE COURT: Who is Deborah Reynolds?

11 MR. ARNOLD: Deborah Reynolds is the significant
12 other and co-host of *The Pete Santilli Show*.

13 THE COURT: All right.

14 MR. ARNOLD: She's in regular telephone contact with
15 Pete Santilli, and my understanding -- from speaking to her on
16 the phone -- regular contact with Pete's attorney, Tom Coan.

17 And she had received specific information from
18 Mr. Santilli, over the phone, that she conveyed to me. And
19 then we had it reduced to a declaration, regarding his
20 deprivation of access to counsel while he is in Nevada.

21 And with the Court --

22 THE COURT: Since the last hearing, he's been
23 transported to Nevada. Is that what --

24 MR. COAN: He was transported on Tuesday, your Honor.

25 THE COURT: Thank you. That point wasn't clear for

1 the record.

2 Go ahead.

3 MR. ARNOLD: Sorry, your Honor.

4 THE COURT: All right.

5 MR. ARNOLD: Thank you. Ms. Reynolds states that she
6 spoke to Mr. Santilli approximately three days prior to signing
7 this, which would have been the -- the -- the 2nd.

8 And he told me -- he told me that he could not
9 believe what's happened since he had been in Nevada. The first
10 couple of days he thought he would just deal with the
11 conditions of incarceration, but found himself in a cell 23
12 hours a day.

13 And, your Honor, I'll just point out, by way of
14 proffer, this is a similar experience that they -- many of
15 defendants -- if not all of them -- saw here in Oregon. That
16 there is a -- a jail policy at Multnomah County jail to do this
17 secluded treatment for 23 hours a day, basically, in order to
18 essentially process them.

19 I talked to Captain Peterson, at the jail. And it
20 wasn't anything specific to these defendants. It's just what
21 they claim they always do in order to do their intake process
22 for two weeks.

23 So, in essence, they're getting a solitary
24 confinement twice over. They're being re-intaked. Apparently
25 at least Mr. Santilli is, down there. And the problem with

1 that is he is essentially in lockdown. And that this is --
2 again, back to the proffer. That means he is only allowed to
3 come out of his cell when there are no other inmates present.
4 This means that he's only allowed to come out of his cell late
5 at night, 11:00 p.m. local time. That means that he can only
6 contact his attorneys during that time. It's my understanding
7 he eventually -- after the phone call I had with Ms. Reynolds,
8 he was able to reach out and speak to Mr. Coan during business
9 hours, and I don't have any other details about that.

10 At the time, it prevented him from contacting his
11 attorney in Oregon and also prevented him from having family
12 time, and everything else.

13 And we know, by way of proffer from Mr. Bundy's
14 experience in Oregon, during that one-hour time he has to
15 shave, he has to clean his cell, he has to do personal
16 business, he has to call his family. And then, you know, he
17 can shower and then find time to, you know, do -- do all of
18 these personal things that -- you know, cleanliness, that's
19 sort of a, you know, natural right to do. And, also, if you
20 transfer that obligation -- the personal obligations to the
21 Nevada situation, you also have to call your lawyer.

22 THE COURT: So you're saying this exists for the
23 first 24 hours?

24 MR. ARNOLD: No. It was two weeks here in Oregon.
25 And apparently it was -- if it was last Tuesday through

1 Friday -- or Tuesday through Saturday. So Tuesday, Wednesday,
2 Thursday, Friday -- five days in Nevada.

3 DEFENDANT AMMON BUNDY: My dad and brother are
4 still --

5 MR. ARNOLD: Yeah. Hold on.

6 By way of proffer, my understanding, from speaking to
7 Carol Bundy and from speaking to her -- or Mr. Cliven Bundy's
8 attorney, he's been in some sort of similar conditions for over
9 a month.

10 THE COURT: All right.

11 MR. ARNOLD: Apparently, since -- just by way of
12 candor, also since he began raising these issues with the jail
13 guards, he's been allowed out of his cell for two hours a day;
14 apparently starting on Saturday, is my understanding. He was
15 able to apparently talk to his Oregon attorney during that day,
16 which I believe would have been -- what day is today? Would
17 have talked to his attorney on Monday.

18 The guards -- this is hearsay within hearsay. But
19 the guards personally told Pete, who told Mr. Reynolds -- or
20 Mrs. Reynolds, that it was a hardship on jail staff to take the
21 efforts necessary to keep him from other inmates while in
22 custody.

23 So it appears that there's a suggestion that they're
24 doing it, you know, for the purported safety of the individual
25 defendants.

1 And what I would ask -- in addition to the stay --
2 and the Court asked what could be done in relation to
3 Mr. O'Shaughnessy. I think all of the defendants would benefit
4 from a proactive approach to -- to protecting their rights that
5 are -- could potentially be inhibited based upon this
6 information.

7 We would ask that the Court require the Government to
8 show cause through an evidentiary hearing, where the Court can
9 actually evaluate the condition of the facilities by way of --
10 you know, we can Skype it or telephone call, or whatever. Have
11 the warden of these jails, have the -- have the main jailer
12 that's helping with Mr. Santilli, we can flesh out factually
13 what is actually occurring and the Court can inquire, as
14 opposed to the -- you know, the executive branch, through the
15 U.S. Attorney's inquiring.

16 THE COURT: Thank you.

17 Mr. Coan, did you want to add anything to that?

18 MR. COAN: What I can add to that, your Honor, is I
19 will say Mr. Santilli's being held at the Anderson County
20 Detention Center, just outside of Las Vegas.

21 I cannot make any calls in to him. He can only make
22 calls to me. So my communications with him are, you know, not
23 good because I don't know when --

24 THE COURT: Has he been -- I'm sorry.

25 MR. COAN: I don't know when he's going to call.

1 THE COURT: Has he been appointed counsel there?

2 MR. COAN: He was appointed counsel. That -- that
3 attorney, as of yesterday, had not visited him.

4 THE COURT: All right. As yet.

5 MR. COAN: As of yet.

6 THE COURT: All right. And just to refresh my memory
7 of the order that is the subject of this interlocutory appeal,
8 it also anticipated that if that order was exercised according
9 to its terms, Mr. Santilli would be returned to Oregon once
10 those who were transported were returned.

11 MR. COAN: There was an alternative plan, your Honor.
12 We had hoped to have a detention hearing or a review of
13 detention down in Las Vegas before the 13th. Because it's my
14 understanding that if the Court doesn't stay this order, these
15 defendants, here, will be transported down on the 13th. The
16 marshals may be able to transport Mr. Santilli back up here at
17 that time. If he hasn't had his review of detention hearing at
18 that time, it will be the 23rd.

19 THE COURT: All right. So I understand the point
20 about prejudice, having to do with the manner of confinement in
21 Nevada; the concerns the defendants have who are the subject of
22 this order.

23 So were there any other points before I hear from the
24 Government?

25 MR. ARNOLD: My client reminded me that -- another

1 issue that was brought to our attention was the lack of --
2 traveling with the legal documents.

3 THE COURT: I addressed that at the last hearing.

4 MR. ARNOLD: Right. And I believe Mr. Coan --

5 MR. COAN: I can also add to that, your Honor. I
6 was -- the marshals here tried to accommodate. Mr. Gabriel
7 told me that he -- Mr. Santilli would be able to take with him
8 up to a large envelope of documents with him.

9 I gave him an envelope to secure some discovery
10 documents, that he could look at in his travels. When he
11 actually made the travel, he was told he couldn't take
12 anything. So those have all been returned to me, and he
13 doesn't have any discovery materials down there.

14 THE COURT: They are back in your possession?

15 MR. COAN: Yes.

16 THE COURT: Thank you. All right.

17 Mr. Knight.

18 MR. KNIGHT: Thank you, your Honor.

19 With respect to the merits, I'll focus only on the
20 second factor laid out in the parties' briefing, and the
21 Government will rely on its briefs for the other factors. And
22 that factor is whether or not there is indeed irreparable
23 injury absent a stay. And, again, I get back to the language
24 "irreparable injury."

25 What has been proffered to the Court today and what

1 already exists in the record does not amount to what would
2 constitute an irreparable injury. It is, by and large,
3 speculative.

4 And I want to speak specifically, right now, of
5 course, to the concerns about confinement in Nevada because the
6 harm has to be attendant, of course, to the Court's order
7 itself. Not just general confinement conditions here in the
8 District of Oregon, but really as they relate to Nevada.

9 Nothing that has been proffered would suggest there
10 is an irreparable injury or such a severe injury to the
11 defendant's Sixth Amendment rights such that his rights -- in
12 this case, Mr. Santilli's rights -- have been impaired.

13 It was conceded that Mr. Santilli had some contact
14 with Mr. Coan. And I can't speak to the efficacy of the
15 procedures in the jail there. But the bottom line is the
16 record, as it stands right now before this Court, suggests that
17 Mr. Santilli is still receiving representation as a result of
18 the order that's already been effectuated. And there is
19 nothing to suggest -- going forward with these other
20 defendants -- that the District Court in Nevada or the Marshals
21 Service can't ensure that they will have access to counsel or
22 legal materials, going forward. And that seems to be the
23 issue -- the narrow issue as presented by these new arguments
24 today.

25 And with that, your Honor, the Government will rest

1 on the existing arguments in the brief, and supplement it only
2 with the fact, again, that the arguments about harm appear to
3 be purely speculative. And even if accepted at face value,
4 don't rise to the level of irreparable injury.

5 THE COURT: All right. Give me a moment, please.

6 (Pause, referring.)

7 THE COURT: I have taken seriously the arguments
8 defendants raise on all grounds.

9 I conclude that the question the Government has
10 raised as to the Court's jurisdiction to consider the
11 defendants' motion to stay is, in any event, moot because I
12 don't find the stay as warranted when I consider all of the
13 factors that I'm required to consider.

14 It is and remains a most unusual situation the
15 defendants are facing here. The Court's authority over this
16 prosecution does not extend to controlling the manner in which
17 a co-equal court in Nevada chooses to control a proceeding
18 involving some of the same parties.

19 I tried intentionally to make the order I did enter
20 narrow, time specific, and limited to the one anticipated
21 transport that I've authorized. And I believe, in doing so, I
22 have rendered inarguable, really, the argument of irreparable
23 injury. The whole format and extent of the order is that
24 defendants will be away for a period of about ten days. And I
25 don't find under any of defendants' arguments that that in any

1 way is an injury to their constitutional rights: The right to
2 access to counsel here; their right to speedy trial here; their
3 right to due process here.

4 The extent to which they wish to challenge -- if my
5 order stands -- in Nevada the impact of that order on them
6 there, that's a matter for the Nevada court to address.

7 It's clear that this Court does not have any
8 authority to address the arguments about the manner of
9 confinement or access to counsel when defendants are confined
10 in another judicial district.

11 It's clear the defendants who are the subject of this
12 order do not want to go to Nevada, and I have -- and I
13 certainly appreciate their need to be here and to move forward
14 on the schedule that I'm trying very hard to implement so that
15 we do commence a trial at what I believe is the earliest
16 feasible time, beginning with jury selection on September 7.

17 I don't believe there's any showing, then, of a
18 likelihood of success on the merits here because the fact that
19 it's an unusual case doesn't -- doesn't equal a substantial
20 case for relief on the merits; the narrow tailoring of the
21 order itself minimizes any risk of a constitutional violation;
22 and ten days is just that, ten days.

23 I don't believe any injury the defendants anticipate
24 is irreparable. I don't believe that there is any significant
25 Government or public interest in not allowing the District of

1 Nevada to have the defendants for this limited period of time.
2 And more pract -- pragmatically, I believe I do need the
3 confirmation by the Ninth Circuit Court of Appeals that this
4 order should stand.

5 And if I'm wrong on these analyses, then it's
6 important that that decision get made by a higher court now for
7 the future progress of this case and the one in Nevada. If --
8 if the Ninth Circuit Court of Appeals believes the defendant
9 should not be transported, they know now of the urgency of the
10 matter.

11 I know Mr. Federico and counsel for the affected
12 parties will be contacting the court, the Ninth Circuit Court
13 of Appeals, promptly after this session today, to let them know
14 that I did not stay the order. And that they will need to
15 address it or the marshal will in fact transport. The order
16 remains in effect until an authority overrules it or says it is
17 no longer in effect. And I do not intend to do that here.

18 So, therefore, I don't need to resolve what I think
19 is an interesting theoretical question about jurisdiction.
20 Because if I did have jurisdiction, I would deny the motion to
21 stay on the matters for the reasons indicated; and if I don't
22 have jurisdiction, then the question is moot.

23 So I look forward to the Ninth Circuit providing all
24 of us with controlling direction on this problem. I do not
25 anticipate the issue would arise again here in Oregon, as I've

1 already indicated, and so I'm denying the motion to stay.

2 Mr. Bundy.

3 DEFENDANT RYAN BUNDY: Yes, your Honor. I
4 respectively [sic] take exception to your ruling. I do feel
5 that there would be irreparable -- irreparable damage. As far
6 as I know, to date, there is no method and science to move back
7 in time the time that we would lose in transport, in -- in
8 booking in and out, et cetera, et cetera; as time that would be
9 lost on both cases, for both trials, that would not be
10 irreparable.

11 And, you know, you -- you, as a judge, do have the
12 power and the authority to -- to stay that motion, to move us.

13 THE COURT: Well, Mr. Bundy, I didn't say I didn't
14 have the power.

15 DEFENDANT RYAN BUNDY: I understand.

16 THE COURT: I said, on the merits, I don't believe
17 it's warranted here.

18 DEFENDANT RYAN BUNDY: I understand.

19 MS. LUDWIG: Is that it?

20 DEFENDANT RYAN BUNDY: Say that again?

21 (Pause, Ms. Ludwig and Defendant Ryan Bundy
22 conferring. Ms. Ludwig and Defendant Bundy sit.)

23 THE COURT: You're -- all of the defendants affected
24 by my original order have an exception to the ruling just made.

25 As I expect, Mr. Federico will be in touch with the

1 Court of Appeals promptly to see if they will provide expedited
2 guidance on whether a ruling on any issue is forthcoming before
3 the close of business on April 12.

4 For the defendants who are affected by the order,
5 remember that if it is not lifted by the Ninth Circuit, Counsel
6 should take steps to ensure that the defendants' papers are
7 safeguarded in a way that protects them while they are away, if
8 indeed they're allowed to be away.

9 Mr. Medenbach -- I wanted to address -- filed a
10 motion to reconsider. I need to find it.

11 An order I made denying his motion to dismiss. I
12 raise it only because it came in out of the order of the joint
13 status report. I do believe the Government should file a
14 response to it.

15 Mr. Gabriel, are you --

16 MR. GABRIEL: Yes.

17 THE COURT: -- on deck for that?

18 MR. GABRIEL: Yes, your Honor, and we can do that
19 within seven days, again.

20 THE COURT: All right. Mr. Medenbach, good morning.

21 DEFENDANT MEDENBACH: Good morning.

22 THE COURT: So I'm going to get the Government's
23 response.

24 I've read all of the materials you've submitted, and
25 I'll make a ruling once I hear the Government's written

1 argument, which you'll have. I don't need a reply because most
2 of what you've written to me is what you already said in court.
3 I understand the points. But you've made them now. You have
4 been clear, for the record.

5 So the motion will be taken under advisement when the
6 Government files its response.

7 DEFENDANT MEDENBACH: Can I talk about some other
8 stuff?

9 THE COURT: I'm talking about the motion you filed,
10 asking me to reconsider the motion to dismiss ruling that I
11 previously made. That's what I'm addressing right now.

12 DEFENDANT MEDENBACH: Okay.

13 THE COURT: Do you understand what I just said about
14 that?

15 DEFENDANT MEDENBACH: Yes.

16 THE COURT: All right. Was there something else you
17 wanted me to address right now?

18 DEFENDANT MEDENBACH: Yeah. Is this a good time to
19 do it or --

20 THE COURT: Well, I'm asking, do you have something
21 else, yes or no?

22 DEFENDANT MEDENBACH: Yes. When we were in court on
23 the 11th, we had a discussion about the oaths of office.

24 And under 28 U.S.C. 453, it states:

25 Each justice or judge in the United States shall

1 take the following oath or affirmation before
2 performing their duties of his office.

3 I was wondering if I could get some verification that
4 you've taken this oath and also the one that we -- you took the
5 oath to understand -- to support and defend the Constitution of
6 the United States.

7 THE COURT: Well, I publicly took that oath in this
8 courthouse in November of 1999, and I don't see any need to go
9 beyond that, sir. So, no.

10 DEFENDANT MEDENBACH: How about 28 U.S.C. --

11 THE COURT: I'm not going to address the oath issue
12 any more.

13 DEFENDANT MEDENBACH: Okay. I'm just asking.

14 THE COURT: And I'm just answering; that we've
15 covered this on many occasions now.

16 DEFENDANT MEDENBACH: We never --

17 (Audience members speaking.)

18 THE COURT: Quiet in the back of the room or step
19 outside.

20 Mr. Medenbach, I'm not going to reconsider this oath
21 issue.

22 I'm a judge of the United States District Court for
23 the District of Oregon.

24 You need to move on.

25 DEFENDANT MEDENBACH: Well, if you haven't taken this

1 oath --

2 THE COURT: Sir, if you have any other issue to
3 raise, raise it now; otherwise, take a seat.

4 DEFENDANT MEDENBACH: (Sitting.)

5 THE COURT: All right. Are there any other matters
6 in the public record we need to take on before I excuse the
7 prosecutors and all of the members of the public and take up ex
8 parte issues with defense counsel and defendants? Are there
9 any other matters?

10 For the Government?

11 MR. KNIGHT: No, your Honor.

12 MR. GABRIEL: Not for the Government, your Honor.

13 THE COURT: I don't see anyone else standing on
14 behalf of the defendants. So at this time all -- everyone
15 needs to leave the room unless you are one of the named
16 defendants or one of their assigned counsel or court staff.

17 (Conclusion of proceedings.)

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Certificate

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I certify, by signing below, that the foregoing is a correct stenographic transcript of the oral proceedings had in the above-entitled matter this 16th day of June, 2016. A transcript without an original signature or conformed signature is not certified. I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

/S/ Amanda M. LeGore

AMANDA M. LeGORE, CSR, RDR, CRR, FCRR, CE
CSR No. 15-0433 EXP: 3-31-2018